

Contracts

1st. A contract is a promise or agreement between two or more persons, which is enforceable by law.

2nd. It is a contract that in connection with a contract is always void in a court of law.

3rd. It is of land there is no question but that a contract made by a person who is a minor may be avoided in a court of law by the minor or his representative of full age and person. But it seems to be supported by four authorities that the person who was a minor when he entered into a contract cannot avoid it in a court of law himself.

4th. This doctrine is treated with some authority by Judge Blackstone but is ^{generally} ~~generally~~ ^{supported} ~~supported~~ by some by Powell and the latter seems to be supported by the authorities. 5th. Tagg v. Hammett ^{the} ~~the~~ ^{of} ~~of~~ ^{contract} ~~contract~~ ^{is} ~~is~~ ^{no} ~~no ^{fact} ~~fact~~ ^{doctrine} ~~doctrine~~.~~

6th. A contract may be avoided in a court of law in this manner. The Crown against a person's promise to enquire whether the person is the owner of the land to which the promise relates, and if so, the Crown may sue for a recovery of the land.

7th. The Crown may sue for a recovery of the land in the name of the Crown, to the use of the person who is the owner of the land, and who is the person who is the owner of the land.

8th. A contract may also be avoided in a court of law by an application in the name of the person who is the owner of the land, to the use of the person who is the owner of the land.

9th. The Crown may sue for a recovery of the land in the name of the Crown, to the use of the person who is the owner of the land, and who is the person who is the owner of the land.

- 15th it is not to be understood that a man
can rescind a contract because he was mis-
taken thus he cannot do if the contract ap-
pears to be a fair contract
- 16th it is said that a contract made by a
man altho of weak intellects will not
be set aside in law or equity
- 17th but authorities certainly support the
doctrine that an unreasonable bargain
obtained from a man of weak intellects will
be rescinded in Chancery
- 18th The case of a few contracts for
staves & fene
- 19th The case of a minor's contract for parent
& child
- 20th a contract may be avoided sometimes in
Chancery by reason of the intervention of
a mistake
- 21 where a contract is entered into and both
parties are mistaken as to the qualities of
the thing contracted for concerning that it
possesses certain qualities which it does not
these qualities are such that the contract would
never have been made if they were wanting
Chancery will rescind the contract
- 22 for example a contract to sell to the
lord of land on which it is supposed both
by A & B that there is a fast spring it being
the design of B to purchase a well spring
and there being one over a fine green meadow

of the contracts having entered into upon running
the line between the land sold to B and the adjacent
land of C. Inasmuch as it was found that the salt
spring was upon the land of the adjacent pro-
prietor in such case C having well refused
the contract

23rd But if the mistake was respecting some
circumstance that tended to enhance the
price but if it had not existed the contract
would have been made the result of that circumstance
was not the true value of the contracts be-
ing made Chancery will not refund the
contract but the vendor's remedy must
be in a court of law for a compensation
in damages

24th If A sells to B an article of no value
but by reason of some secret defect in
the article sold actually injurious to the sel-
ler and buyer and B has paid his money
he shall recover damages to the amount
of what he has paid

25 If he has given his note therefor the
remedy is the same or he may ^{rescind the} ~~contract~~ ^{contract}

26th In the last case of the seller the holder
of the note is a bankrupt & a court of chan-
cery will offset the damages against the
note

27th There are many instances where a per-
son has entered into a contract under some
mistake as to his rights that Chancery
will interfere to refund the contract

28 If that mistake or error has continued to
the effectuation of the contract Chancery will not
refund the contract

29th for Example A agrees to B his wife to
furnish a Debt allowed by the Statute of Limi-
tations, which she had heard that there was
any law under which he might serve him-
self from the payment of the Debt yet Chancery
will never relieve against this note.

30th Fraud sometimes renders a contract
utterly void in a court of law - at other times
the contract infected by fraud is, to be avoided
only in Equity & in other cases neither law
or Equity will render the contract void
but the remedy must be in a court of law
for a compensation in damages.

31st where the fraud is in the Execution
of the contract it is void in a court
of law. that is where a man enters into
a contract different from what he pro-
poses that he enters into & this is true
about leg fraud the same.

32d for example A agrees to give to B
a male of hand for five pounds, & B demands
the note for fifty pounds, and being blind
B reads it to him for as being a note for
five pounds and he executes here he
executes one contract whilst he supposes
that he executes a different one this con-
tract is void at law & A may plead non af-
fumpsit.

33 but if the fraud is in the considera-
tion the contract is void in a court of law.

34th if that is if a man knows what contract
he executes but is deceived in the considera-
tion of for which he contracted.

25th if the fraud affects real property
as where I sold to A

35th but such a contract may be avoided in
chancery in any case where a man has
given his security for the payment of
money & the fraud has been total—

36th but it is a case of money paid & the
fraud has been total an action of unde-
latus assumpsit lies to recover back the
money

~~But~~ 37th but if the fraud has been partial
and respects personal property as where
I sell to B an unformed horse for a saddle
representing the horse as found con-
sultation must be sought for and give
a count of law for damages—

38th altho it is partial if it relates to
real property Chancery will refuse
the contract upon the usual terms

39th fraud in the consideration tho even
so small renders a mercantile contract
void in a court of law

40th ~~in general~~ In all the cases men-
tioned ^{where} the party injured may
avoid a contract by reason of fraud
either in the execution or consideration
he is not obliged to do so he may elect to
avoid ^{it for} as necessary in an action of damages
for the fraud committed upon him

41st To ~~conf~~ contract not only found
in the Examiners but a total fraud in
the consideration will render a contract
void in a Court of law

42 and in such case the fraud may ^{be} ~~may~~ ^{be} ~~be~~
specially or generally in Examiners under the
general issue

43 this doctrine is to be understood with
this qualification if the fraud consists
in selling a tract of land if this sale
is by Examiners of the Super & Advan-
tantee

43 in such case if the contract is sued then
any will not interfere to set aside the
contract for the person in possession
has an adequate remedy at law

44 but if the contract is not sued in
such case Chancery will sustain a bill
for the rescinding this contract for
perhaps the contract will not be sued
until all the witnesses are dead who
can prove the fraud

45 if several Securities have been given
for such contract and one is ^{only} sued which
X may be awarded in a Court of law yet
Chancery will ~~not~~ sustain a bill for
rescinding all the Securities

46 this doctrine must be understood with
some qualification for if the fraud con-
sists

in the Sale of land and then ^{one} Community of
Jury & Warranted Chancery will not
interfere ~~for that~~ where the person
was not seized on where there has been
an Ejection for the person impleaded
you has his remedy on the Covenants
at law.

67th But if the the Covenants is a
Bankrupt Chancery will interfere
for then no effectual remedy can be
had at law.

68th ~~the law~~ Tappinland every contract
disrupted with fraud ought to be confu-
red as void as well by the common law
as by the mercantile law.

69 the law that establishes a contract as good
where the fraud has been. "partial law"
as I believe to be obsolete as principle
as where I wishing to purchase a horse
suitable for the Saddle this is his only
object is impleaded by the who
falsely offering his Horse to be sold when
he is affected with lameness and totally
unsit for the Saddle under the false
impression agreed by the fraud with
the purchase, the Horse under ~~that~~ goes
for him £20 his real value if he was a
good Saddle Horse the Horse is of some
value or to be used in a team and for
that purpose may be worth £20-00
why should he ~~be~~ remedy be a com-
pensation or Damages,

when recovering. £30-0-0 the difference
between £20-4-0 & £50-4-0
pounds, for it is manifest that it has
imposed upon him an article that
he never intended to purchase he stood
in no need of a team horse and in this
very he is obliged to part with £20
for an horse for which he has no
use in such a contract the mind of
the purchaser is not and there
ought not to arise any obligation
it would much better confer the pur-
chaser of purchase to confer the contract
as was by reason of this fraud the
horse would then be long to the seller
& the purchaser's obligations if he
had given any would be void and
if he had paid the money he might
return the horse and demand back
the money paid giving ^{him} ~~himself~~
this case as in all others the purchaser
imposed upon him, that can to avoid
the contract or to affirm it by buy-
ing his return for compensation of dam-
ages

50th as when a man purchases an horse
with counterfeit money this being a total
fraud the courts have allowed the seller
to bring an action of fraud & recover on the
ground that the contract was void
on an action for damages for the fraud
in such a case the contract

- 51 contracts which inquire upon persons
not granted to the contract due and
- 52^d as where the son of C is about to
marry the daughter of D and D proposes
to give his daughter a portion of say £5000
provided C will give his son the same
portion & if the son agrees with C he falls
to return £2000 of his portion on gives
a bond for to do and this is kept a secret
from D fresh contract between the father
& son has always been held in Chancery ^{to be void}
- 53^d as too in a Court of law but lately
fresh contracts have been held to be
void
- 54th as where A Creditors agree with him
to take up with 10/ on the pound & B one
of the Creditors cannot be induced to
sign the agreement until A gives him
a bond or rule for a further sum
say £100 which is kept a secret from A's
other Creditors this bond or rule has
been held void in a Court of law
- 55th the the case would have been the same
if any friend of A had given the bond or
rule
- 56th and fresh contract cannot be made
and void by any after contract ratify-
ing the same

57 many contracts the most fraudulent
is because one party has been deceived
either as to the execution or consideration
of the contract and void to in Chancery
because it has been obtained by taking
an undue advantage of a man's situation

58th if therefore an unreasonable bargain
should be obtained of a man when
intoxicated & apprehend that Chancery will
revert it upon the grant mentioned -

59 when an unreasonable bargain is obtain-
ed from a man in necessary circumstances,
Chancery will revert it upon the same
ground

60 when a man who is involved in debt
and to avoid the disgrace incident to
bankruptcy is induced to part with his
property far below its value to his cre-
ditors Chancery will relieve

but it has been a question whether fraud
of force only matters and with
any circumstances of fraud or imposed
hardship will be sufficient to set aside a
contract

or represented that the Indemnity offered
may ^{be} such as to furnish evidence of
that form found to our ungrateful hands
are taking an undue advantage of a man's
situation has taken place which ought
to render the contract void.

63 I feared what consequences of property by
one man to another in article defect
creditors of their demands full without
is void against creditors

X b6 As when I conveyed to H. his property
& to prevent that property from being
subjected to the debts of his to creditors

5 but such convergence is good between
the parties that is to say it has can hold
the property against it the he never
parted anything for ^{it} was agreed to
give a something for it.

But the fact conveys always implies that there is a secret trust between grantor & grantee that the grantee shall in some way suffer the grantor to take the benefit of this estate to himself whilst it is concealed from the view of creditors

by but this is an unlawful trust which
neither Law or Equity will enforce

68 altho it is urgent in H to obtain the
prospect of this conveyance I get upon principles
of policy the law will not compel him
to restore the property

69 and for the same reason the law
will not raise any contract between
the parties that H shall pay for the
price of the thing conveyed

70 the mode prescribed by law for the
creation of it to secure this prospect by
conveyed to himself is to sue & having
obtained a judgment against H to ~~lengthen~~
to take out execution thereon & levy the
same ^{on such property} as if there had been no conveyance
from A to H

71st under our attacking law it may be
attacked on fact. but ~~will~~ ^{will} be taken to sus-
pend the judgment that may be obtained

72 fact conveyance is void not only against
prior but subsequent creditors, to the
conveyance

73 altho may I may owe H money yet if
the conveyance is absolute & the discharge
in value before the thing conveyed and
the debt is paid that ~~as~~ ^{as} ~~the~~ ^{the} ~~conveyance~~ ^{conveyance} can
be made.
that there is a fact that it is

74th if there was not the wife & might part
with property to the amount of £10000
to which he did not owe more than
an hundred pounds

75th and thus B shall not had the pro-
perty as a security for his Debt for
it was a security him to attempt
to shelter it from his creditors by
an absolute conveyance

76th if his object had been to free his
Debt he should have clearly taking
the property as a pledge thus the
refusal of the intervention payment of
his Debt would have been open to his
creditors

77th A may give B a full power for
his property yet it may be well a
case to defend B's creditors knowing
that B is not able to pay his credi-
tors with the purchase money but to
obtain fresh conveyance will be as
against creditors

78th Voluntary conveyances are void to
be found void against creditors even
where they are there is not any the least
unequalities of price

79 ~~this~~ this proceeds upon the principle that
a man properly must be first compelled to
the payment of his debts before any volun-
teer can reap any benefit from it

80 but this doctrine is to be understood
with some restriction for a conveyance
may be voluntary and creditors cannot
avoid it for it is not void because it is
voluntary -

81 as if a man ^{to be} owing only a hundred ^{being} shillings of
100 and worth £5000 should by a vo-
luntary conveyance grant to his son a
farm of worth £1000 and in a course
of years should pay 4 or 10 square in his
estate looking on and taking no pains
to serve his debt after he finds his whole
estate is spent he endeavours to take the
estate so conveyed to his son he shall not
be allowed to dispossess the just expec-
tations of the son tho a volunteer for it has
been negligent

82 altho this system is founded on the Statute
and then construction yet it is found that
the common law would attain all the ob-
jects embraced by the Statute

83^d a voluntary conveyance without any
fraudulent design is not standing against cre-
ditors
+++

84 if a man conveys away a particular
piece of property with a deed to keep it
from Creditors yet if he leaves abundantly
sufficient to satisfy his claims provided there
which is left is personal property which
may sold at the port and the money in fact
it is not fraudulent

85 and if the Debtor had nothing but real
property if that real property which
was left was exactly saleable with that
which was taken it would not be fraudulent
but

86 if A conveys a farm of land to himself but
by to B & B conveys it to C who is or has
prejudicially not giving to the former
can the Creditors of A take it

87 on the one hand it is said that the land
has remained the conveyance from the
B as void against Creditors and that B cannot
by fresh void conveyance acquire so little
that he can convey to another

88 on the other hand it is said that A could have
conveyed to C for its value and at a void charge
been ^{good} & therefore B can do the same

88 Topperhead the argument in the last
case is unfelicitous fallacious tho' it is
true that it could carry to C for a fair
price & it would be good against Creditors
yet in that case ^{it} is as able to pay his debts
as before the conveyance and altho' the
propriety of the debt is not visible where
as to levy the execution yet the law pre-
scribes that as C is against his body well
known to the Creditors the grey must of their
debts -

89 but where B conveys the property to
C he is indeed interested thereby but it
is dependent not only of his land but of the
purchase money and the Creditors of
A are sellers without remedy for their
debts

90th it says that the Creditors of A can
recover this money out of the hands of
B if this is so yet there is no precedent
of the kind

91 but admitting this to be possible yet
in this case the Creditors of A are for-
ced to look for their money from a man
with whom they never contracted and
that man perhaps as B or himself

92 such a construction nearly always gives in-
to the pleasure of the fraudulent grantor & guar-
tee to put the property quarantined out of the reach

of the creditors and thus under the purport
of this law may stay

94 a contract obtained by duress is void in
a court of law

95 there are two kinds of duress viz duress
of imprisonment & duress per vires

96 Duress of imprisonment is when a man
is unlawfully imprisoned and a contract
obtained from a man ^{thus imprisoned} to procure his
liberty is void

97 altho the debt is a just debt yet if a
man is thus compelled to give a bond
or other security for that debt such
security is void

98 but when the ~~for~~ debt remains still
a debt altho the security should be avoided
in a court of law

99 if a man is lawfully imprisoned and
is improperly restrained which in-
duces him to enter into the contract
such contract is obtained by duress

100 when a man wife or child or parent
is falsely imprisoned a contract obtained
to procure their liberty is obtained by
duress even as to a parent and child

101 but if given to procure the liberty of
any other person it is not obtained by
duress

102nd a contract obtained to procure the
release of goods or property held as mort
obliged by
chattel

103rd Duress per vias is when a contract
is obtained by threatening a man with
imprisonment loss of life limb or any
great bodily hurt

104 if the threat is to a man's wife child
or parent the law is the same

105 if to any other person there is no duress
per vias

106 no threat of destruction to property
is duress per vias

107 no any contract tho not obtained
by that force which amounts to duress yet
if obtained by putting a person in fear
which fear procured the contract altho not
void in law will be avoided in Chancery

108 if the contract would not have existed
had it not been from respect and reverence
to a parent's opinion and the contract was such
as is reasonable Chancery will not refuse
it

109 a contract to perform an impossible thing
is not binding

108th to maintain it would it must be physically impossible that is to say impossible in the nature of things,

109th as for example a contract to run one hundred miles in a minute for this would be impossible in the nature of things

110th but if the impossibility arises by reason of the circumstances peculiar to the person contracting the contract is binding

111th as for example if A contracts to pay £100 when it is impossible for him because he is not worth. say 100 pence yet the contract binds him

112th so if a man covenants to convey a farm of land which he cannot he cannot be enforced it is avoided by another farm whom he cannot purchase yet he is liable on his covenant

113th yet Chancery will not decree

X a specific performance of such contract where such an impossibility exists but leave the party to it his remedy in a court of law

116th But if the impossibility arise from the act of the person contracting Chancery will decree a specific performance

117th As for Example A mortgages to B & B assigns to C in this case B had sent it out of his power to convey a title to ^{at} yet it was an impossibility created by his own act & therefore he is liable for a redemption Chancery will decree against B

118th If in that case B does not give a title for A he will be subject to the penalty imposed by the Court

119th Such contracts as are void by reason of impossibility of performance are void in a Court of Law

120 contracts which are possible at the time of the performance and become impossible by the act of God ^{or of} the law ^{or of} the party are not binding

121th For Example A contracts to deliver B a performance on the first day of the sitting of the Court and B dies before the Court sits A is excused

122nd If A agrees with B to
marry C by such a time and before
the time B marries her himself A
is released from his contract

123rd A conveys to B with a condition
annexed that if he does ^{not} ~~do~~ ^{as} ~~an~~ thing
which is impossible the conveyance
shall be void in this case the property
is vested ^{in B} and shall not be defeated by
the non performance of the impossible
condition which is subsequent to the
conveyance

124th but if an estate is granted to take
place upon the performance of a thing
which is impossible as this is a con-
dition precedent to the vesting of the
estate and as it can never be per-
formed the estate can never vest

125th if a man gives a bond with a con-
dition to be void if he does not perform
an impossible thing it is said that the
bond is good and the condition only void

126th for example if A gives a bond to B and C
B & C have a condition that if A goes
from Litchfield to Hartford in a carriage the
bond shall be void

127th the soundness of this doctrine I suppose to be very questionable for had such a contract been debated at length in a court without the intervention of a third the contract would have been void

128th Transfer a bond with fresh consideration nothing more than a covenant thereon into a debt shape differing in form from a covenant but differing nothing in substance

129th a contract to do an unlawful thing is not binding whether it is to do that which is *malum prohibitum* or *malum in se*

130th ~~a contract to perform~~ as for example a contract to steal an enemy's ship or other forbidden by law is void

131th a contract to perform any act upon an unlawful consideration is void if it

132nd as a promise to pay an officer a sum of money if the officer will suffer him to escape this is not binding

* 133 fresh contracts are void in a court of law

134th a contract which has a tendency to induce an unlawful thing to be done is void

135th for example I keep a wagon full of wheat he cannot whip ^{the contract contained in} this it is void

136th as you cannot recover damages for the non-fulfillment of an unlawful contract, for neither can you recover money paid to a man for fulfilling an unlawful contract.

137th as for example A promises to B to sell him goods if he does not so action lies against him and if B had paid to A money because he had sold him goods B could not recover this money back.

+ 138th if the contract remains executory and not performed and money has been paid then this money can be recovered back.

139th as for example if A agrees to sell goods and B pays him money for to do so before A sells the goods B brings an action to recover it back he shall recover.

140th this appears to me to be bad policy for it lays a temptation before A to sell the goods & thus violate the law for when this is once done there can be no recovery back.

141th for further illustration the law forbids gambling and declares all contracts for money won at gaming void if A & B game together & A wins of B £1000 pounds which B has promised to pay A cannot recover it and if B had paid A the money he cannot recover back.

142th the principle is that the law will not go so far as to bind itself as to bind its aid to either party who has deliberately set down to violate its salutary regulations.

143 This doctrine does not apply to those cases where the law was made to punish & the writ against the strong and to prevent oppression. Altho both parties were concerned in the violation of the law

144 As where money was given to a creditor by a bankrupt to sign his petition for an act of bankruptcy which by law is forbidden that is to say the law forbids the bankrupt to give anything & the creditor from receiving anything this money however the bankrupt may receive back

145 So too A takes of B more than lawful interest which B agrees to give the forfeiture of legal interest B can receive back of A altho he has parted with the money

146 The principle is that B is not in the two last cases in prais delicto but the receiving the money is considered as an act of oppression on the part of A

147 If A & B are partners and have entered into an unlawful contract and A pays money & B pays it shall he make B contribute his share

148 The rule is if he pays it without the privity of or consent of B he cannot make B contribute but if with his consent or privity B not disavowing it B shall contribute

149 I agree to do a thing that is lawful, and he
saw the time arrives for performance and the thing
agreed to be done is forbidden by law. it is not
binding on his contract

150 altho it is not bound to perform he can
do it in such ^{case} yet if it has already paid him
for the thing to be done it can recover the
money back

151 If something less can be done than what
was agreed ^{upon} altho it is willing to do he
up there with altho no action at law
will lie on the contract for the non-
performance of this less thing yet then
they will enforce its performance

152 As where a Bishop contracted to leave cer-
tain lands belonging to the Church for 90 years
by the first day of November then next
& before November arrived an act of parlia-
ment is made forbidding Bishops from leaving
Church lands for a longer time than forty years
& in this case I should be willing to take
a lease for forty years for his money & the
Bishop refuses I then very well might tell him
to give such lease

153 A bond with a condition to do an un-
lawful thing ^{if void} as much as any other contract

154 if the illegality of the contract appears up-
on the face of the contract paid you can at
ways demand

155 But as it is without condition
in a note for that the illegality of the con-
sideration of the bond is void does not ap-
pear in that case you may think that it was
given for an illegal consideration & taking
what that consideration was

156 and the illegality of the consideration
may be evinced by several ways

157 a conveyance of land to become void
if the grantee dies not do. Some say
lawful act is void if the condition to do the
unlawful act is void

158 a conveyance of land to do an condition
that it does some unlawful act subsequent
to the conveyance the conveyance is good
if the condition void

159 a contract contrary to law amongs ille-
gal contracts are usury contracts
usury, particular notable which is a con-
tract by which some than lawful interest
is received or taken for the loan of money

160 a contract whether by promise
note or bond ^{or contract} in which there is
received more than legal interest is
void in a court of law and is made
void by statute

161 a contract by which more is taken
than lawful interest does not render
the contract void but subjects the taker
to the penalties of the statute

162 which penalizes by the English statute
as to the value of the loan and by some
statute the value of the loan to be re-
served by any person who will free the
refractory debtor

163 as evidenced ^{both} where more than legal
interest is reserved and more is taken is
void and the taker liable to the penalties
of the statute

164 to illustrate the above Doctrine
A loans to B £90 in fact and no more
A takes B's note for ^{no legal interest} £100 this
contract is void for there is reserved
therein ten pounds too much but if he
has received nothing thereon he is not sub-
ject to the penalties of the statute

165 for too if A loans to B in fact £100
and takes a note for £100 with 10 per cent
lawful interest being taken but the
contract is void being repugnant to the
fact of it for A has reserved too much

166 Again A loans to B £100 in fact
A takes a note for £100 on lawful interest
and when B comes to pay his interest he
refuses upon tender and A says he
will not being able to pay the principal this
note is not void for there is no too
much reserved but he is liable to the pen-
alties of the statute for he has taken more
than lawful interest

167 If A loans to B £90 & takes a note for £100 and then receives £6-0-0 for taking the note is void for ten pounds too much was repaid and B is also liable to the penalties of the Statute for he has taken £-0-0 when in fact he loaned only £90 the interest of which is only £5-8-0

168 in the last case the note was void in its commencement for then there was too much repaid but he had not increased the penalties of the Statute until he had received too much and that was when he took the £6-0-0 as interest

169 but the taken sum is void the penalties of the Statute for when B offers the £6-0-0 as interest ^{for a year} he may take only £5-8-0 as interest money and and one 12th towards the principal.

170 if A loans to B £100 on interest and receives a premium for loaning the money the contract is void for in fact this is in reality not taking too much but repaying too much for he in fact loans as much less than £100 as the premium amounts to

171 As for example B gives to A a premium say £3-0-0 on B's note for loaning to him £100 now B's claim that A does not in reality loan to B only £97-0-0

172 if however the premium amounts to more than £6-0-0 the contract is void and it has incurred the penalties of the statute for too much was referred and too much was received

173 It seems to be settled that it is not material in what time of the year the interest is received whether at the commencement middle or end so that it be undisturbed as a years interest

174 for an £100 you receive for granted for a year so for you may receive £3-0-0 for half a year altho this is more than at the rate of £6-0-0 for an hundred for an year for you have the use of the £3-0-0 for half a year

175 in order to constitute the contract referring the ^{at which} ~~sum~~ more than £6-0-0 is referred as in ^{the} contract it must be by an explicit agreement

176 therefore if it is referred by mistake as by a wrong casting up accounts it is not referring

177 if the mistake arises from a mistake as to what the sum of casting interest is altho too much is referred but without an intention to take more than legal interest such contract is not referring

178 a contract referring compound interest is not referring but it will have no other operation than if it had been taken for an interest only

179 If A has a sum of money which has been on interest for a considerable time say 5 years and the interest had not been paid any part of it and the Debtor agrees to give a new note including compound interest such note is not usurious and the money is recoverable

180 more than lawful interest may be received and the contract will not be usurious provided there was a real hazard of principal & interest being lost

181 but that hazard ^{must} be merely recoverable

182 In the structure of this doctrine suppose A lends to B £100 to receive £20 as interest provided a ship going a voyage to sea returns safe and if she is lost to receive neither principal or interest such contract is not usurious for the hazard is real

183 and no doubtance in the interest will make it so if the hazard is real

184 upon this principle it is that all owner bonds & respondent bonds are not usurious whatever the rate of interest referred is

185 upon this principle the loaning cattle leg to drabble in four years is not usurious for the lender runs the risk of accidents to the cattle

186 so too if I lets it have an hundred pound
to pay him more than lawful interest an-
nually say £12 0-0 per annum as long as
he it shall live and at his death shall pay
no more either principal or interest such
contract is not usurious for there is no
real hazard

187 if it loans to it £100 to me annually
£12 percent if he it is alive the next ^{day} it
being then in good health but if ~~it~~ dies
before the next day it is to pay no part
of the money loaned in this case altho
there is some hazard yet the law will
adjudge it to be merely reasonable of the
contract usurious

188 so too I having ten children in good
good health loans to it £100 at 12 per
cent provided any of its children are
living at the end of the year and if they
are all dead it is to lose his money they
will be deemed a reasonable ~~or~~ hazard
189 but if it had been provided all its chil-
dren are alive at the end of the year
then the hazard would be real

190 altho more is reserved upon the happen-
ing of some event than lawful interest
yet if the contract is so framed that the Debtor
can discharge the Debt without paying
more than legal interest the contract is
not usurious

191 in all the terms of this doctrine says
pay & loans to \$ L100 for years in law
but inherent and it is provided if it does not
pay to 1 the L100 & interest at the end of
the year then it shall pay to 1 L200
this is not superior for it had it in his
power to have saved himself from the
penalty by paying the L100 with interest
at the end of the year

192 but the operation of such contract
would be such that it could never recover
thereon more than the L100 & interest for
counts and charges down the bond to
that sum

193 but where more is thus referred and
it is part of the agreement that it
shall ^{not} pay at the day the contract
is superior

194 when the design of the contract is
to buy & sell it is a bargain and market
loan and in such case altho more is found
for giving day of payment than loan
but interest it is not superior -

195 as for Example it appears to do that
his horse & offers him to it for L20 in
hand but it wants a credit for a year
and if it sells the horse to it for L250
this is not superior it needs no loan

196 when a contract is not superior by reason
of the hazard it must be hazard itself not
only at the outset but also of the payment

177 if it gives ^{to} a note & or sells it to ^{him}
X who does not ^{know} that it is usurious yet not
withstand^{ing} this the note is usurious

178 and altho the note is negotiable yet
the note is usurious.

179 but if the owner of the note and the
holder of it the usury is forgiven

200 It enters into ~~two~~ two contracts with
us one of which is usurious and the other
not so and both afterwards are included
in one note this note is good and valid
did because it is usurious shall the con-
tract that was not usurious ^{be} voided by the
same valid Term included ^{in the} that it is void

201 the general rule is that the place
where a contract is made regulates
the interest

202 for example if a contract is made
in England the interest is 3 per cent if in
Ireland the interest is 6 per cent &
in every other of per cent

203 so that if a contract ^{or interest} executed in new
york is found in the ⁱⁿ England courts ^{and}
per cent will be recovered in these courts

204 to this doctrine there are exceptions
if a contract for 7 per cent is made in
England with reference to the style of it ^{and to be there} ^{per cent}
X ^{is not usurious}

205 for Example if a merchant in New England
meets in New England & a merchant in New
York and they agree to give 7 per cent
Taylors interest that such contract is not
refusable

206 clear it is that if of hand gone to a
York & so contracted it would have
been good it seems evident to suppose
that it must be so far as to give
to prevent the refusal

207 so too if it ~~is~~ gives his note
in New York and for 7 per cent of
towards, renews it in Connecticut for
7 per cent Taylors interest that it would not
be refusable for in such case it is only
renewing a contract confessedly law-
ful

208 so too on the other hand if A & B both
living in Connecticut & A borrows £100
of B and in order to get 7 per cent A &
B agree to go into the State of New York &
there give a note for 7 per cent Taylors
interest that it would be refusable

209 there are numerous remedies provided
to release against refusable contracts
if the contract ^{is not made at length} and the force of it runs
more than lawful interest you may
demand

298 but if it is cancelled as it may be by
a variety of ways as make one \$5 and may
appear for \$100 in lawful interest & yet there
may be found more than \$70 - 00
for tax it may be \$70 and sell our house
for thirty pounds which is not much less
to be understood by the parties and doing
the sale for \$100

299 in the last case altho the sale of
the house puts on the appearance of
a sale it is done to secure a loan & there
fore obvious

212 if you plead the usury you must
state that if in the state that more
than 6 per cent was referred on that
more than lawful interest was re-
ferred be

213 it must be stated that it was by
express agreement between the \$10 & \$1

214 you must also state how much more
than lawful interest was referred

215 the necessity of this is to me incon-
sistent for you may prove more or
less than what you state and it will be
sufficient

216 when you thus plead you must prove
the usury by common law disinterested
witnesses

217 by a lot of connections if you can &
not prove the contract to be refineries by
disinterested persons you may if you file a bill
before the court to compel your case found selling
separate the lot showing that it is refineries

218 and in that case you may appeal to the
conscience of the pt and if he will not testify
he shall not complain

219 if he testifies and from thence it appears
that the contract was refineries the court
shall render judgment for the pt to recover the
principal & interest discharging all the interest
both legal & lawful and usurious

220 if it is not in your power to file a
bill because you are not found you may
file a bill in Chancery against the con-
tract and if found by an appeal to the
conscience of the respondent & if found
that the contract is refineries the court
will release against the principal of
principal & lawful interest and nothing
more

221 if the contract is refineries and there are
green Sundry securities and all the refund
one money is contained in one of them
yet all the securities are void

222 all contracts against found trading
are void

223 A contract that a man will confine himself in prison for until he pays a debt has been held ~~contrary~~^{to} sound policy

224 a contract to serve a man as a slave has been held ~~void~~^{to} on the same argument

225 a contract not ^{to} cultivate your lands ~~is~~ is against sound policy - -

226 a contract not to follow your calling is against sound policy

227 but a contract not to follow it in a particular place is held to be lawful

228 but in this case it is necessary that there be not only a consideration ~~is~~ in other cases but the consideration will be enquired into in whatever form the contract may be made

229 whether wages are contracts against sound policy has been lately agitated in Westminster but as they had been allowed for so long a time to be valid they were supposed to remain so

230 on this subject there has been of approach and determination in the state of Connecticut

231 Wages, where of importance are held to be against sound policy

232d contracts that are perfect by Sale
as not ^{to} wash your hands &c are read
on the same account

233 contracts where a Warranty exists
which cannot be supported with out in
direct Evidence is void for the same
reason

234 So too if it has a tendency to wound
the feelings of a third person
as in the case of a Woman that Chees-
ter De Or was a woman

~~238~~ in all the before mentioned cases the
contracts are read in a Court of law
with out

235 Marriage breach bonds will be
valued against in a Court of Chancery
upon the same ground and why they
should not in a Court of law cannot
comprehend

236 As where A gives a Bond to B if
he or she will procure a match he
will give him 3 £ found guilty of fraud
that marriage should be dissolved about
by such practices
^{a contract to}

237 the purchasing the Expectancies
of Heirs or is held to be ~~undiscoverable~~
intentionally covered by a Court of
Chancery

237 such contracts are against. Law
feeling as they inure to the advantage
of young men and the propriety
which their parents suppose will be
not to their hands for the support of the
scholes and families become the prey
of unscrupulous sharpers why such con-
tracts should not be considered void as
well in Courts of law as Chancery I see
no reason

240 there are many contracts ^{which} are void
because not inured to contracting

241 this is effectuated by a statute ex-
cept in the case of a contract to build
a person as an agreement this must
be by Deed so too all contracts ^{by writing}
concerning land or tenements are void by
the common law to be in writing

242 the contracts required by Statute
called the Statute of frauds & perjuries to
be in writing are 1st all promises by
an adm^r or ex^r to pay Debts or legacies
out of their own estate 2^d all contracts to
pay the Debts of another 3^d all contracts in
consideration of marriage 4th all contracts
relative to lands or any interest accruing out
of them 5 all contracts to not to be perform-
ed in a year

243 with respect to the fact it has been de-
termined that if the Adm^r or Ex^r had no hands
affacts of its pay the Debt on legacy
promised if the promise was by pro-
val yet he is bound

244 many promises to pay the Debt of
another have been held not to be evidence
the Debt ^{the} by proval

245 if a promise is to pay the Debt of
C clearing the Debt of C uncancelled on
it & standing against C the promise
is always good unless in writing

246 but a promise to pay the Debt
of C upon its delivery up to C his
contract or note then this promise is
is valid tho by proval

247 tho if A had said to B I will pay your Debt
Debt against C and I will pay it I would
have been bound tho by a proval pro-
mise

X 248 the rule seems to be this if the promise
comes in aid of an existing promise
then it is void unless in writing if the
original contract is at hand at an end
and the promise ~~comes~~ to pay the debt of A
another is all the security that the promisee
has it is good tho by proval

249 altho the original promise of A to B is a good & binding contract yet if B has got any security for the payment of that promise and at A promises to pay C Debt of B will we leave the security of B due to A's bond altho the promise is by personal

250 the promise in consideration of marriage is held not to extend to the case of a promise to marry but relates only to marriage partners

251 a contract relative to land has been held not to be within the Stat where a grant would be accomplished by having that it was within the Statute

252 as where a contract has been undertaken whole or in part on one side it shall be performed by the other party by the law personal

253 as where A promised to B that he would about twelve weeks give him a lease of a farm for ten years if he would enter thereon & build a house. B entered and built the house & refused to give the lease claiming well allowed a general release of this agreement and conveyed to give the lease. used in a year

23^d & it is said that the contract being ~~readily~~
executed on one part shall be performed on
the other part in such case but the ~~principle~~
the apprehension is this it is a fraud in
it not to perform after having received the
consideration for performance

25th And the grant is not let in to prove
a little in it but to prove the fraud in it
for surely the Statute was not made to prove
but a man in a fraud turn indeed if a man
by grant promises to give a deed and there
being nothing more in the case he is at liberty
to fall from the contract but if he
is about to deliver to himself and respect
advantage by a fraudulent use of this promise
Chancery will let in grant proof to prevent
this fraud -

25th & if I contract by grant to sell
a farm of land to H he is not bound by this
contract but if he has paid the purchase
money to H it is a fraud in it to take the
money and then refuse to give a deed therefore
it is that in such case grant proof is let
in to prove the fraud and Chancery will
decree a performance of the contract to give
and H is not taking advantage of the fraud

257. so too it seems that a contract
X by bidding off lands at Vendue is not within
the Statute

258. so too in all cases where a bill is
filed in Chancery and the respondent ad-
mits that he made the contract the
by general facts contract is out of the Statute
for the design of the Statute was to pre-
vent fraud & perjury and as facts exist
there is no danger of either and fact alone
cannot be within the design of the Statute

259. the danger exist grounded against
in the Statute was this to prevent facts
contracts from being enforced by the
recollection of any man of the terms of
a contract but when the party himself
comes into Court and confesses the con-
tract there is no danger of his having
imposed upon him a contract which he
never made by fraud perjury or mistake

260. the Court is not satisfied about the
contracts being in writing provided they
can come out in any way without being
tied to the recollection of any man to
the terms of the contract & for this
was what the Statute was intended to
guard against

266 I know that it has been said
a confession of the contract not of Court
would be admitted to be proved this X
appears to me to be opposed to the go-
vernment principle in such cases for
it seems to me the danger is the same
that the court will misinterpret or
misunderstand the terms of the contract
confessed as that ~~that~~ he should misinterpret
and misunderstand the terms of the
contract when made

267 Upon the principle which governs in the
construction of this statute the court have ad-
mitted facts to be proved from whence it might
be inferred that a deed which appears to be
an absolute deed is a mortgage; did on a deed
had intent

268 As for instance A owes to B £100 and
in consideration thereof gives to B a deed
of Black acre which is an absolute deed and
yet B retains the word for the £100 in his
hands and receives the interest upon it. it
claiming now this conduct is wholly in-
recoverable with the idea that the deed was
absolute for if it was then B would not re-
tain the deed and surely A would not want
well his land to pay the debt & yet willingly
pay interest on the debt which he had paid

x 264 suppose another fact existed in the
case notwithstanding it had been a deed
of Black came to the fact & remains in possession
I can pay and pay no rent therefore taking
the profits without accounting for them
this is wholly unconscionable & as to the
fact that it was an absolute estate for if
it had been so would not suffer it to remain
in possession without paying rent

265 suppose another fact existed in the case
that it should have paid of Black came of
A & payment for it this would be for the
owner to give his own land of another
person and cannot be accounted for upon
the hypothesis that the deed was an absolute
unconditional deed

266 but these facts are perfectly reconcilable
upon the hypothesis that the deed
was a mortgage and speak an unequivocal
and large fact that cannot be mis-
understood and force upon ^{us} irresistibly the
conclusion that this deed is a mortgage

267 and this is admitting general proof
of these facts from whence this inference
is made is not ⁱⁿ letting general proof to presume
a mortgage that the Statute intended to
prohibit for nothing was contemplated
but only to prohibit the proof of the terms
of the contract by general testimony but there
is no danger in proving facts from which an
inference can be made

268 to convey lands it is necessary not only that the contract should be in writing but it must be by deed

269 but articles of Agreement respecting lands may be in writing without deed

270 and such articles will be considered in Equity as a conveyance

271 as to the 2nd case mentioned in the Statute that the every contract not to be performed in a year must be in writing it has been determined that altho the contract may not happen by reason of events not to be performed in a year yet it is not within the Statute unless by the terms of the contract it is not to be performed in a year

272 if a contract is entered into on the first of January 1804 to be performed on the 1st of ~~January~~ Febry 1805 this contract by the terms of it is not to be performed in a year and therefore must be in writing

273 but if the contract were to be performed when a ship should return from England and altho the ship does not return until after a year yet such contract is good by parol

274 such contract must be signed by the person to be bound thereby.

275 yet it has been held that if A & B
contract together & to sell & B to pay &
A writes the contract & delivers it to
B to sign who signs it and is thereby bound
A never signs it yet so that A under
these circumstances is bound and that the
signing of it is the signing of A also

276 to render a contract valid there must
be a consideration

277 the quantity of the consideration is
not material

278 the consideration must be such as is of
some value in a pecuniary point of view

279 it is not necessary that it should be of
any value to the promisor for a loss
to the promisee is a good consideration

280 as where A promises B that he will
pay such a sum if B will do a certain
thing altho the doing it is of no benefit
to A yet if B does it it is a loss or valuable
to him

281 if A promises without any consideration
to pay B a sum of money to build for him
an house &c these promises are void
vacts and not valid

282 this is applicable to all executory con-
tracts, but not to contracts executed

283 that is to say if a promisee to give
me 10 is furn of money on an house
he is not bound by the promise but
if he actually executes the promise
gives to 10 the money on the house
grants with the possession he cannot
again reclaim it

284 property so granted with is liable
to the creditors of the donor but the
donor's personal right to it is at an end

285 this doctrine is admitted by all
to be sound so far as it is applicable
to personal property

286 by some it is contended that if there
is neither a valuable consideration
nor any legal marriage or a good one
nor very love & natural affection that
a deed of real property would operate
to the use of the grantor.

287 the doubt has arisen & proceeded from
the terms of the charity statutes
viz to the use of the grantor

287 ^{customary} found it was, during the wars, be-
lieved the houses of York & Lancaster
to carry hands to persons to the use of
other persons ~~was to them~~ ^{with} ~~an~~ ^{of} ~~use~~ ^{quantity}

288 which some gave the fee
to the grantee but the use to the
quantons that is the right of improve-
ment and every beneficial interest the

289 this was done to prevent a confes-
sion of their property by the preceding
party in those dangerous times for
it was always held that a wife was not
liable to confiscation

230 therefore it fell out that the Court
upon seeing a conveyance without
any confirmation supposed that there
was a fair presumption that it was
intended to be for ~~his~~ the grantors
overseer being a very common ac-
count that such conveyances were
made

271 when this became the established con-
struction of the such grants it was un-
derstood that the legal title
was in the grantee & the equitable title
in the grantor which Channing would
protect and not ^{mislead} ~~was~~

272 when therefore the Statute of uses
was made giving to the use man if the
expression is allowable the fee such grant
imposed no purpose for altho if I grant
to B to his use the deed may be confiden-
ced as vesting the ^{legal} title in B yet the
statute instantly transfers back to A that
title -

273 such a construction of the grant it is
apparent given out of the then peculiar
state of Society in England

274 I apprehend then it would not be ap-
plicable to a grant made in this or
any other Country where the State of Society
is totally dissimilar

275 for there is nothing in the nature of
real property requiring it should not pass by
a grant contract executed to the grantee
more than there is in personal property

276 I therefore apprehend that a deed given
to B delivered to B without any consideration
vests the title ⁱⁿ B ^{just} as much as if I had
given and delivered an house to B ^{which} ~~they~~ ^{he} would
have needed the property of the house in

278 where the contract is in writing and the consideration expressed no parol proof can be admitted to show that there was none for this would be to admit parol proof to contradict the averment in the written contract

278 yet if the consideration there expressed is such an one as in point of law is considered (1) no consideration the contract altho written is of no validity for it says means from what is written to be distinct of a consideration

279 if the contract is in writing & the consideration is no otherwise expressed than by the sum for value received without stating what that value is the consideration by this English law may be engrossed into.

300 such an instrument is in contract treated as a specially attested instrument

301 if the written contract does not express any consideration nor acknowledge one yet one may be proved by parol for such proof does not contradict the written contract but stands well with it

302 where the contract is sealed there is no necessity to ~~show~~ infer any consideration or to acknowledge any in the instrument or to aver any as having even existed for the deliberate act of sealing is presumed to carry with it incontrovertible evidence of a consideration.

303 if therefore there is given to B a bond as fast B must pay the whole ~~of~~ hand.

304 but if this sealed contract is to do a collateral act altho there must be a recovery on the contract if the thing is not done yet the damages may be merely nominal.

305 if it is asked why there is this difference between a Bond where the whole is to be recovered and a covenant to do a collateral act the answer is that in the case of the bond the sum to be recovered is ascertained by the instrument but in the case of the covenant the damages are to be ascertained by the trier and there is no rule of law that forbids inquiring into the quantum of the consideration altho you cannot deny that there is any where the instrument is sealed.

306 if therefore there is no other consideration shown than what is implied from the act of sealing a contract the recovery in a court of law will be nominal damages only

307 and a Court of Chancery will render decree the specific performance of such a contract

308 I will here hazard a conjecture that altho the instrument is sealed yet if that instrument defaulted ^{length} the consideration and it appears ^{to be} that which the law incidentally recognizes as such that on such contract no recovery can be had

309 for altho it is presumed from the act of ~~sealing~~ sealing that there is a ~~presumption~~ consideration yet this presumption is rebutted by the detaching the consideration in the contract if it appears to be no consideration

310 — it is said that where the consideration is paid at the time of the contract the contract is of no validity ~~that~~

311 that is to say if A promises B to pay him so much for something that B has already done without any request to do it this is said to be a past consideration for B had no claim on A that he could enforce before the promise made

312 however the rule might be, in modern times this rule must be understood with some qualifications (on if A promises to pay B a sum of money for something done by B which is beneficial to A A shall be bound altho the consideration was past

313 for example B enters into A's field with the scythes of A and labours faithfully for A ~~at A's request~~ altho he had not been requested and A promises B to pay him for his days work in this case A is bound for altho the consideration was past yet the thing done was beneficial to him

314 but if B had entered in to A's field in like manner and A promises A that he will pay B to pay him for that days work A would not be bound for the thing done was in no measure beneficial to him A

315 when a year it is said that when a
gravel contract is reduced to a specialty
in such case no action can be brought
on the gravel contract ~~but~~ ^{you} you may
have a remedy of an higher nature to
which you must resort

316 this is strictly true where such
contract has been merged in a bond
or covenant to pay a sum certain

317 but if the contract is detailed
at length in the specialty upon English
principles you may sue upon the gra-
vel contract and give the sealed
contract in evidence

318 & in connection the fact must
be kept on the words or sealed con-
tract in all such cases-

319 if A promises to abide in reward to
be made & enters into a bond for per-
formance and an award is made you
may sue on the award if you choose for
this would not be merged in the bond for
the securing the fulfilment of which the
bond was given, for the award arose
subsequent to the bond

320 if I owe to B a sum by specialty and pro-
mises to pay it such promise lays no foundation
for a recovery for there remains the remedy
on the bond and which is of an higher nature
321 but if in that case the promise was an
some new consideration distinct from the debt
an action might be sustained thereon

322 as if I say to B if you will show me
the bond I will pay it & B shows it hence
the trouble of showing it is a sufficient con-
sideration

323 but in such case & if you lose the damages
mentioned be the contents of the bond for
these may be recovered as a debt upon the
bond

324 in some cases the security may be lost
be void and no fact can be proved against the
security and yet the principal contract is good
and value was merged in a void security

325 as where an infant gives a bond for
necessaries the bond is void but the principal
contract to pay for those goods remains

326 so too. A owes B £20-0-0 by a general
contract & for B falsely issues a writ of
A is bound for this debt by statute the bond is
void but the debt remains & A is liable upon
the principal contract

326 so too an English Statute makes void all fees
lies given for money lent at play but the principal
contract is good & so

327 A offers to B an article for Sale and in the course of conversation he fixes the price at £20-0-0 B agrees to give in this case if nothing more is done the bargain is not consummated as to give a right of action to the other

328 but in that case either party may hold the other to his contract by doing certain acts as if A in fact sells the article to B the article vests the property in B and gives a right to the £20-0-0

329 so too if B had tendered the money he would acquire a property in the article for which he might sue -

330 but if it had been agreed that B should have the article and pay for it at a future day the right to the property vests in B by the bargain & a right to the purchase money in A the payment of which is postponed

331 if A agrees to pay B a sum of money when B delivers him a certain article A is not liable until B delivers the article for the delivery by B is a condition precedent to any liability on the part of A.

332 but if the consideration of A paying money is top to B is that B promises to deliver the article in this case it is not safe for promise and B can sue for the money without delivering and A can sue B for not delivering

333 this declaration thus articulated & promised
to pay to B £5 on B's delivering to him a cow
now before B can sue & he must deliver by
the terms of the contract. but if it ~~had~~
B had promised to deliver a cow to A & in
consideration that B had so promised pro-
mises to pay £5-0-0 to B here B may sue
A without delivering the cow

334 for in the former case the promise
to pay was in consideration of a delivery
in the latter case it was in considera-
tion of a promise

335 if ^{performance of} the contract is postponed to future
day & forwarded that it is impossible ^{to keep} ~~to keep~~
after the contracting parties is to do the first
act then he who would enforce the contract
must tender what was to be done by him

336 as if A agrees to give B on the first
day of ^{May next} £50-0-0 for his horse & B promises
to deliver to A on that day his horse for £50-
by such contract no man can tell whether
A is to part with money before he receives
the horse or whether B is to part with his
horse before he receives A's money

387 if therefore B intends to ~~be~~ under the contract valid he must tender his horse or if it intends to have the horse and tender the contract valid he must tender his money

388 if nothing is done by the parties or yet of injury the contract is at an end

389 it is a rule that a person under a moral obligation to do a thing
alltho it cannot be enforced in law as if a person gives consideration to enforce a promise to do that thing

390 as where a debt is ~~owed~~ by a person to a lender if the debtor promises to pay he is bound by the promise for he was under a moral obligation to pay a just debt

391 so if an infant contracts a debt and when of full age promises to pay it he is bound by that promise

392 a voluntary ^{beneficial} conveyance lays no foundation for a trust but a promise to pay for such conveyance is binding for the promise is under a moral obligation to do

393 but if a feme covert contracts a debt and when discovered promises to pay she is not bound and yet there may be a moral obligation upon her to pay

344 this last case shews that the rule must be understood with some restrictions a distinction obtains & apprehended in this manner viz if the original contract was either void in its creation or subsequently void ~~void~~ binds as in the case of the same Court but if it was good in its origin or only voidable it does bind as in the case of the Stat of Limitations & of infancy

345 there are cases where a promise to one person may lay a foundation for another to bring a suit on the promise if it was made for the benefit of that other person

346 as where a father was about to provide for a daughter in his will by a sale of his ten or land given to his son the son promised the father that he would pay to his sister the money that was to be raised by the sale of the timber if he would not inden the timber in his will to be sold - here the sister maintained a suit against her brother on the promise made to the father

347 it will be remembered in the last case that this promise to the father was for the sole benefit of his daughter & she alone had a beneficial interest in the promise

348 So where I promised B that in consideration of B's having wrought a great cure for him he would pay his B's daughter £10-0-0 the daughter for whose benefit the promise was made maintained an action in her own name against the promisor

349 but I have not found any case in the books where the contract was made to a specialty altho the obligee was merely a trustee of that specialty for the benefit of another that this other person the cestui que trust maintains an action as if in his own name

350 but has been determined in Councils at and before the national court that the cestui que trust should maintain an action on ~~the~~ such specialty in his own name where there has been no legal difficulty in assigning the action in the name of the obligee -

351 as where A conveyed to B large tracts of lands and took a bond of A to convey to C his daughter these lands when A became of age before C arrived of age A died and made B his Executor when C came of age B refused to convey the land the bond came into the hands of C and the suit against B could not be tried in the name of C who was the Exor for he was also the promisor

- 352 I must act as an alien on the bond in
her own name against B and it was
held by the national court that the
action was insupportable
- 353 for in connection with a ^{sum of great} bond
was taken to the wife & party to give
security as first where a few hundred of
a whole where part of the generally went
to the prosecutor & part to the accused
of a county and the appellant did not
prosecute by which means the bond he
came forfeited and the obligee would not
for the bond the accused of the county
by but a part upon the bond and it was
supported
- 354 A & B make a contract and the thing to
be done is postponed in this case the grantor
may agree by deed to throw up the bargain
before there has been any failure of performance
and consequently no right of recovery has at-
tached to either party
- 355 but if the time for performance arrives
& there is a failure so that one party is
entitled to an action on account of the failure
a parol agreement to give up the claim is
not binding unless the agreement is sanc-
tioned on ^{some} ~~some~~ consideration

356 for no man is bound by a contract to part with any right without a confession.

357 but if there is a release or discharge sealed the party giving it is bound for this seal implies a confession & is equivalent if the release is written & not sealed it implies the same thing.

358 a long continued neglect to take benefit of a contract will in some instances amount to a waiver of the contract but all these & cases depend upon the special circumstances attending them.

359 a right to a penalty of a bond may be waived by accepting that for which the penalty was a security.

360 for example A binds himself in a penalty to deliver to B a deed of Black & so by the first day of May next. If afterwards it has not delivered the deed & the penalty becomes due if B afterwards accepts the deed he shall nevertheless recover on the penalty.

361 and in such case Equity will ~~compel~~ ^{compel} to have the bond if A comes into Court and proffers to B the deed the time has elapsed.

362 when A agrees to sell B a close or land thing & before the time to perform it comes an act of the legislature forbids the thing to be done the contract is annulled.

363 but if part performance is still lawful it is required by the obligor or promisee to carry out the performance of that part

364 as for Example a Bishop agreed to lease some lands ecclesiastical lands to B for 90 years by such a time & before that time the lords have forced Bishops to lease the church lands for a longer time than 20 years B then required the Bishop to lease for 20 years the Bishop refused & Carney compelled him to do so

365 A purchaser of B's article pays the purchase money & B refuses to deliver the article here it may free B in law for the property of the article is vest

366 but he may also treat the contract as void if he elects so to do from the fellow who refused to fulfill and in disaffirmance of the contract may bring an action for ^{money} had & received to his life to recover the purchase money

367 so A contracts to transfer Black to B on such a day & B pays him therefore £200 the day arrives & A fails to transfer then B may sue upon the express contract & recover damages for the non-fulfillment of the contract

368 so too he may disaffirm the contract & sue for to recover back the money paid just as if there had been no contract

369 A sells to B a house to be delivered to A on the first of May for £30 which B agrees to pay on that day the day arrives & B sends the house B does not pay in this case A may sue B for the £30 in affirmation of the contract

370 or if he elects he may sell the house to another person in disaffirmance of the contract & the sale will be good

371 A bids of at Vendue an article sold for £20 here ~~the~~ A is liable to be paid for the 20 if he does not pay

372 on the Vendue master may if he elects go to do fitly the article again and knock it off to another bidder

373 & in such case if the article cannot be sold ~~to the~~ ^{for} as much as when it was bid off to A A is liable for the difference money-

374 if A agrees to deliver to B a cask containing wine on the first day of May & fails & B sues to recover damages the measure of damages is the value of the article at the time when agreed to be delivered ~~from that time~~ and the interest

375 for Example A agrees to deliver 20 barrels of wheat to B on the first of May when wheat was worth 2 dollars per barrel the damages are 40 dollars & the interest

376 if the debt at the time of judgment is
3 ^{dollars} ~~less~~ or one dollar the rule of damages is
is two dollars per Bushell

377 there are many cases of implied contracts as
well as express contracts

378 as when ~~any~~ ^{one man} buys articles of another without
any agreement to pay the value of them the
law implies that the man who buys them pro-
mises to pay what the goods are worth

379 so too when a man is employed to
do any business for another without any agree-
ment to pay for the services the law implies
that the employer promises to pay as much
as the service is worth

380 so too if I borrow of B a sum of money
without any express agreement to repay it
the law implies that I promised to pay the
money borrowed with interest

381 so too if A B purchased and settle therein a
covenant & by this settlement there appears to
be a balance due to B altho there is no express
promise on the part of B to pay the balance
the law implies that he promised to pay
B that balance

382 If he has got into his hands money belong-
ing to B which in good conscience he can-
not retain the law implies that A promised
to pay over this money to B

383 as if A sell to B an article which turns out not to be his or of no value the consideration altogether failing the law implies that A pay back the purchase money

363 so too if B has paid to A by mistake more money than B owed to A the law implies that A presumed to repay that money

386. If A has by any fraud & or violence
gotten into his hands ~~more~~ money that
belongs to B the law implies that A is
obliged to pay that money to B.

3

386 So it so if A lends to B money by the
hands of C the law implies that C promises
to pay over this money

387 and where the law has made it ^{indispensable} the ob-
ligation of A to ~~do~~ do certain acts as to maintain
a wife or child with necessaries and A refuses to
do so on pretence it is out of the power B does
it the law implies that A amounts to nothing 72

388 and when a man is indebted in a ^{personal} ³ debt
certain upon an express contract the an-
cients is maintainable on the express contract
yet the law also upon such indebtedness im-
plies a promise that the promisor promises
to pay the debt

389 the rule that whosoever in good conscience
is bound to pay money to another shall be
compelled to promise to pay it seems unrea-
sonable unless some principle of policy steps in
to prevent its operation

390 as where A & B agree to break the laws
of society and in this ^{way} ~~way~~ gets from B his
money which in conscience he cannot retain
yet the law will not assist B for since he
voluntarily engaged in the violation of the
salutary regulations of society let him
take the consequences

391 so to a man may be indebted directly & that
debt barred by the Stat. of limitations in
this case law makes no promise for it would
destroy the policy of the Statute if it should

392 if A & B agree to play at unlawful
games, B owing to money upon the principles
of the common law I cannot recover ^{it} because
the money the B has given ⁱⁿ conference cannot retain
it yet the party ^{which} the law to assist
it who has ~~not~~ wilfully violated its
salutary regulations

393 it is said that the law principle which
governs in cases of compulsion is that
the law presumes a man's consent to do that
which nature dictates ought to be done

394 the law principle Toggelien is this
that the law having imposed a duty on a
man if he neglects that he shall be compelled
to perform it in the form of a promise
without any the least regard to his consenting
or not

395 for in many cases of liability there is
not the least room to presume assent but
if in others there is the most conclusive proof
of assent

396 for example A by fraud sends B out
of £100 the law implies a promise by A to pay
the money & yet the transaction renders the
most distant ^{possibility} presumption that A consents to
pay the money

377 yet in that case it was ~~too~~^{to} duty. to
pay to B this money and therefore the
law compels him to do so

378 for too if ~~as soon~~^{at} times ~~his~~^{the} wife out of
dowry & forbids any person to ~~do~~^{do} touch
her on his account and B touches her for
necessaries the law implies a manifest
to pay B the value of those necessaries

377 now in the last case there is not only
no room to presume consent from the na-
ture of the transaction, but the manifest
evidence of dissent & ~~age~~

400 in this case it was the duty of A to
pay B and therefore the law compels
him — — — — —

§401 Germany contracts no suit can be maintained
untill a special demand is made ~~in~~ⁱⁿ other words
there must not be any demand made untill
~~it~~ but what is contained in bringing the
suit

402 various rules are laid down as to ~~the~~^{the} ~~case~~^{case}
respecting the Queen's when a demand shall
be made the law custom by which is deter-
mine Tappin's is this if from the nature
of the contract the promise can discharge

himself by a tender no demand is necessary if
he cannot then a demand is necessary

403 if A promises to pay B £20-0-0 by such
a time he can discharge himself by tender
at the time therefore a demand is not neces-
sary

404 and altho the contract had been to
pay £20-0-0 on demand no demand is neces-
sary

405 a distinction has been made in Com-
merc law betwixt money & other articles as
if a man promise to deliver 20 Bushels of
wheat on demand that in this case a demand
is necessary

406 but this promise is less strict than
from the rules of the common law for
in this case the promisee could discharge
himself by a tender

407 A ~~for~~ transfers for value money ^{a promisor} pro-
mises to pay B £20-0-0 in such a quantity
for him in this case A could not call upon
B and tender such a quantity when he pleases for the
nature of the contract forbids it

408 it is a manifestable construction of such contract that it will run for 15 years unless broken and since I cannot discharge him self by a sudden neither shall I sue it without a special demand

309 A few or valuable confidential persons
may be to hunt for him in house or
church in such cases it is plain that
I cannot at any time ~~be~~ ~~there~~ dis-
charge himself by or under therefore
he cannot be ~~judicially~~ ~~as~~ ~~special~~ ~~charge~~
has been made

h 10 A blacksmith gives for 13 ~~to~~ a few
men to play him £20 in blacksmiths work
in this case it would be ridiculous to say
that I could under the value £20 0-0 in 00
chains or any article the value of

411 the obvious meaning of such phrase
is that A shall pay in full debts & melt
much as B should call upon him therefore
as A can not lend B cannot get without
demanding the work.

412 One bill at the a store one of the same
nature the merchant cannot tender to you
what you require, but you are to share from
among his goods such articles as suit you

413 when your demand is against a corporation
you must make a special demand of the
treasurer of that corporation for the
this case is founded on principles of general
convenience

414 there are some cases that nothing more is
necessary to be done than to give notice
of ~~the~~ the existence of certain facts to entitle
to an action without making any special
demand.

415 as for example A owes B and gives B an
order upon C who is bound to pay the money
C refuses here B cannot sue A for the unpaid
note without giving A notice

416 the principle in these cases is that it
is unreasonable to sue a man who has
no knowledge but that the debt is paid
but on the other as that there exists any demand
against him but in these cases it is not ne-
cessary to demand the money due but only
to give notice of the fact that constitutes
a liability

417 so too A B settles a note that is payable
against B & B takes up the note and again
certainly up the redoubtments it appears that
he has paid it too much by mistake B can
not sue A without notice of this mistake
for A does not even know that any demand exists

416 so too if A agrees with B that in the
course of say 5 years B shall be if B will
go to Hartford and transient certain bus-
iness for him that he A will pay to B
£4 for the services of B does the business he
must give A notice that he has done the
business for A is not presumed to know
until informed but there needs no special
demand for A when notified knows that
it is his duty to pay B

417 so if A agrees to pay B the expenses of
certain lodges at B's house B ought to
notify A what those expenses were.

420 it is hard wisdom as a rule that what
is supposed to be in the knowledge of the
promisee and not in the knowledge of
the promisor notice ought to given
himself

421 the above rule seems to be reasonable
like but the cases do not square with
it for if A promises B on the happening
of a certain event to pay a sum of money
A seems by the authorities be bound to
pay as on the event's happening either
without notice

422 as if A promises B to pay him £20
when he B marries it would seem reasonable
to hold that if B marries that he should notify A
yet it is bound to notice it

423 I more cannot grant away that of which he has not an actual or pretended interest

424 ^{from Example} I grants to B all the wool that he now has the grant is good as to all the wool that A then owns for he has in it an actual interest and such grant is a good contract executed to pass to B the property of the wool

425 I grants to B all the in June 1802 all the wool that shall be sheared from his sheep ~~in June~~ the following Spring here A has not the actual interest but he has the pretended interest in such wool for he is owner of the sheep which produce the wool

426 but if I grant to B all the wool that he A shall ~~shall~~ hereafter buy the grant is void and vests in B no property of the wool for A has no actual or pretended interest therein.

427 All the such a grant is not a good contract executed to vest the property of the wool in B when bought wool at once a grant to a covenant and the grant of A do let B have the wool and if he does not would it not be a breach of covenant

- 428 A lease to H. for 5 years and in the lease granted to H. all fresh grain as should be growing on the premises at the time of the expiration of the lease and the question was whether H. should take the grain -
- 429 in this case it was contended that H. grant was void having no interest in the land at the time of the lease and therefore the property of the grain could not vest in H.
- 430 but it was determined that the grant was good and vested the property of the grain in H. for altho H. had no actual interest in the grain yet he had a potential interest therein being owner of the land which is the mother of the grain.
- 431 a contract executed is where one man makes over his right of property to another which is denominated a gift grant sale &c according to the nature of the transaction.
- 432 a contract executory is where a man agrees to give grant or sell or to do or suffer something.
- 433 it frequently happens that bonds ~~in the~~ which are considered at law in the ^{light} of contracts executed to yet in Equity will be viewed in the light of ~~a~~ agreements.

434 as a bond the consideration of which is that of
a conveyance of land to B. that the bond
shall be void this will be considered in
equity as an agreement to convey and it
will be enforced in Equity to convey the
land to B.

435 and altho that bond should be void as
a bond at law yet if it contains such an
agreement as Equity regards such an agree-
ment will be enforced

436 as when A gave to B his wife a bond
previous to his marriage the consideration
of which was that the bond should be void
if he should after marriage ~~make~~ make
a certain settlement upon B. A & B marry
by which the bond comes into the power
of the husband and is of no validity at law
yet Equity will consider it as an agreement
to make a settlement which agreement the
court of Chancery will enforce

437 so at law a chose of action cannot be
assigned yet if it assigns to B. male agents
it will be considered in Equity as an agreement
by A. to suffer the debt to be collected by
B. for his own use

438 if A & B give a Bond to C & A pays
the Bond in England A must apply to Chan-
cery to compel B to pay his share

439 In connection therewith may sue B as an
adverser on the case & suing the facts and
verifying an affidavit to pay his share

440 we commonly call this process a
writ of intervention - -

441 if A assigns a chose as a Bond to B &
against C & then discharges this bond so
that B cannot recover on the Bond in
England then B may compell C in Chancery
to pay it again to him if he knew of
the assignment

442 In connection the remedy is at law
against C for fraudulently taking a
discharge

443 if A & B are merchants & A dies when
they owe a Debt to C and C after having
sued the survivor B and not being able to
collect his Debt of B he may compell the
Ex^{or} of A in Chancery to pay the Debt

444 in connection the remedy in such
case is by action at law against the
Ex^{or}

445 again the non performance of a contract
except the remedy at law lay at least ~~was~~
the plaintiff recovers damages only for
the breach but cannot in such Court
enforce or performance of the contract

446 but in Equity you may apply in
very many cases for a specific contract
of execution of the Contract

447 and in such cases the Court chancery
the performance & to enforce those damages
lays the person decreed against under
a penalty if he does not perform

448 which penalty ~~may~~ must in Eng-
land be recovered in the Court of Chancery

449 in Connecticut such penalties have
been recovered like other debts in an action
of debt in a Court of law and to this I see
no objection

449 such penalties are not enforced
unless the respondent will come into
Court and perform the thing decreed

450 for example Chancery decrees that
I convey to B. black acre by the 1st day of
March next under a penalty of 2500 I might
be sued for the penalty if I will being added
of 15- be added to 15- in Court altho the penalty
is recovered yet the Court will chancery

451 it is a general rule that a court
of Chancery will not enforce specifically
contracts respecting personal property

452 to this there is an exception where
the contract respects the conveyance of
stock in the funds and a few

453 but where the contract respects
the conveyance of real property a court
of Chancery will decree the performance
of the contract

454 as if A enters into a written con-
tract with B that for £1000 he will
convey black acre to B Chancery will
enforce the conveyance

455 so as B can compel A in Chancery
to convey the land and so A can in Equi-
ty compel B to pay the money ^{purchase}

456 In contract & apprehend I could
not compel B to pay the purchase money
for A has a competent remedy at law
for by the contract it is entitled to no-
thing but money and a court of law is
competent to give him money

457 it is a general rule that a court of
Chancery will enforce specifically ^{no} con-
tracts of which a court of law ^{can}
will give damages

459 For Example no remedy can be had
upon a general contract to convey land
this being within the Statute of frauds
in a court of law neither will a court
of Chancery refuse it

460 So to a contract to do a thing with-
out any consideration affords no ground
for recovery of damages in a court of
law neither will Chancery refuse
such contract

461 and in many contracts which cannot
be avoided in law because they are
not covered with that fraud or obtain-
ed by that fraud as is deemed sufficient in
law to avoid so that damages will for
a breach of them be recovered at law
yet a court of Chancery will not direct
them to be performed if there is any thing
shows an want of fairness attending
them but leave the party at law to
get what damages he can

462 it is a rule in Chancery to enforce
what is agreed to be done as done from
~~the time that it was to be done~~

463 therefore if A contracts to sell to
B a parcel of land & B contracts to pay to
A 1000 £. it is not Chancery will
consider this done as B's and A's
deeds & A is deemed to be done

4th part of 1000 marks to sell black and
to and inform the sale black and is to be
up by an excellent quality chimney will consider
the land is conveyed & 10 of same will be
the lower

466 The many small enclaves or enclaves
which was regular when entered into
but has become irregular by means of
unforeseen events

466 as for instance I sell to B whilst
he & I are in full health a farm worth £800
for which B is to pay A £75 per annum
as long as I live, and when A dies no further
payments are to be made

467 Mrs Langiers was such that if I should
die immediately I would get the land
for nothing if he lived 12 years he
would get just the value if 24 years
he would get double the value.

to be in fact ^{case} if I was to die the next
day I cannot ~~in~~ ^{enforce} the contract

469 but Chancery will not enforce any contract that is not perfectly fair & made knowingly

70 million will ^{equivalent} chain my income ^{document} ~~that~~ ^{is} ~~unusually~~

471 Chancery will never enforce a contract that is merely Voluntary without a good or valuable consideration & for that purpose will look into the contract ~~tho~~ altho it be by a sealed instrument

472 Chancery will not enforce a contract inconsistent with the general policy of a well regulated community

473 it is not true that Chancery will ~~re~~ refuse every contract that it refuses to enforce

474 there may be some degree of unfairness some degree of hardship in a contract which a Court of Chancery will not feel warranted to refuse but such a contract they will not enforce

475 the remedies given by law for the redress of an injury occasioned by a breach of contract are Assumpsit, Covenant, Debt, ~~Account~~ ~~and Detention~~ ~~Account~~ Debt & Detention

476 of Assumpsit there are two kinds 1st an action on an express assumpsit 2d an action ~~the~~ an implied assumpsit the former is sometimes denominated a special assumpsit the latter an indubitatus assumpsit

477 an express agreement is where the terms of the contract are specially made and it is not material whether the contract is by parol or in writing the remedy is by assumpsit for the breach is an express assumpsit

478 if the contract is in writing and also sealed it is a covenant and the action is ~~in~~ thereon is an action of covenant broken

479 in an action on an express contract it is not necessary to state it to be in writing altho it is in fact so but the written contract may be given in evidence

480 if the contract is in fact in writing it cannot be proved by parol testimony but must be proved by the writing

481 the principle is that the written contract is supposed to contain all that was agreed upon between the parties and is not liable to any mistake it is the best evidence that the nature of that case will admit of

482 if you can therefore prove that the contract whatever it ~~was~~ might be reduced to writing you will exclude all parol proof as to the terms of the ~~contract~~ contract

- 483 if there is a question whether the Defendant
had the writing this must be proved by
proof on by compromise of hands
- 484 so too if the question is whether it was
delivered the proof is by proof
- 485 it is true if the written contract is
destroyed so that you can prove the contents
by proof but in that case your declaration
must state that the contract was lost there
by time & accident
- 486 so too you may prove by proof the
contents of a written contract if by any
accident it has gotten into the hands of your
adversary
- 487 this action of assumpsit
is convenient with an action of Debt or
an indebitatus assumpsit and sometimes
it is the only remedy that can be had
- 488 when the contract is to pay for any
article or for any service or for certain
it is convenient with Debt or an indebitatus
- 489 for instance I agree to give to B £20
for an house & B pays for the money in this
case B may bring an action on the express assump-
sit or Debt or an indebitatus. ~~on~~ the first because
it was generally agreed between the parties the second
for an agreement to pay or for certain constitutes a Debt
the third because whenever there is a Debt the law implies
a promise to pay

490 when the contract is to do some callidum
not not the payment of a sum certain the
only remedy for a breach of this contract
is on the express assumpsit

491 as if A for a valuable consideration
promises to B to build an house for him
and does not the action is on the express
contract for Damages

492 in such case there is no Debt for the
damages are uncertain therefore neither
Debt nor indebitatus will lie

493 it is necessary however to observe
that where it pays to B a certain sum
for doing something that B promises to
do & B does not perform - A may sue on
the express contract to recover Damages for
B's non performance this is done on the
footing of the contract and is found to be
in affirmance of the contract & so A may
(if he pleases) sue B for breach of the contract
as a nullity) treat the matter as if no con-
tract had been made & sue B for the money
paid to B as so much money received
to B's use this would be in the disaffirmance
of the contract in such case it may affirm
or disaffirm the contract at this election

494 it cannot be said with propriety that
in the last ~~case~~ case a special assumpsit
an indelictatus are concurrent remedies for
altho both may be had yet they have very
different objects in view the ~~first~~ first
first first is to recover damages for the
breach of a contract the last proceeds on
the ground that there had not been any
contract and that the Deft had got
into his hands the Pl's money without
any right to retain it

495 an indelictatus assumpsit as we have
seen is sometimes concurrent with an express
assumpsit - sometimes with Debt & it is in
some instances the only remedy - -

496 when there is a contract in part but
not all the terms agreed upon so that an
express assumpsit ^{not} can be brought and in
consequence of ^{such} this agreement a Debt is
incurred indelictatus assumpsit may be
brought and in such case it is concurrent with
Debt

497 for example A buys goods of B a mer-
chant at no stipulated price here is a con-
tract to buy but as no price is agreed upon a
special assumpsit cannot be brought but the law
implies that A pays a quantum valebant there-
fore indelictatus assumpsit lies

498 and in this case Debt lies for altho
no sum certain is agreed upon yet the
usual market price will sufficiently as-
ertain the sum and the measure is cer-
tain est of good contents redigested

499 so too if it comes to labour for him
or a physician to visit him when such
is longer to argue & cause for him or
any person to render any special service
without any price agreed upon no action
can be brought upon this ~~case~~ express contract
for the same reason as in the former case
but the proper action is ~~indebitatus~~ ~~for~~
500 & in this case Debt is convenient for
the quantum ~~indebitatus~~ can be ascertained
by the usual price

501 the case is the same where money
is loaned without any agreement when
to repay it

502 the principle of an indebtedness is
that altho there is no express promise yet
law will compell a man to do what is
justice & good conscience he ought to
do under the form of an assumpsit

503 a usually found breach of a promise may
be recovered by Debt or indebtedness

504 ~~in favor of~~ if I find no money in the
Highway it is his duty to pay this money
to B therefore indelatus has & is the only
remedy for there is no contract in there
to make a debt

505 if I by mistake pays to B more money
than he owes B he may have motion
of indelatus a sum of for B cannot
in good conscience retain this money
and it is the only remedy

506 I has obtained no money on a confide-
ration that has failed as if B pays to
A £6-0-0 for a cow by both supposed
to be alive but was in fact dead at the
time of the sale indelatus is the remedy
for A cannot in good conscience retain
that money

507 the case would be the same if it should
turn out that the cow was & is the in
this case an action might also be brought
on the implied warranty that exists
in every case that what a man sells is his
own

508 let the case be what it will if the con-
sideration fails for which A has paid his
money he shall recover it back by an indelatus
unless it was a bargain of hazy and

509 for Example if I sell B land by quit
claim for £500 he returns out B that I had
no bill hence the confirmation hath
failed and B shall recover it back unless
it was understood between the parties
that there was a wish respecting the title
that B was to retain the wish.

510 in the last case it is fair for A to re-
turn the money for it was a bargain of
hazard and the price given was at the
estimated hazard.

511 if a man is defrauded by some trick of his mo-
ney this is the proper action.

512 if money is paid for the future doing of
that which at the time of payment was law-
ful to be done and before the time of perfor-
mance it becomes unlawful by some legislative
provision this is the proper action to recover the
money back.

513 if money is paid to a person supposed to
have authority to receive the money & it
turns out that his authority was void this
is the proper action to recover it back.

514 in these cases where the action is brought
to recover back money that the debt is
paid ~~consequently cannot retain the money as~~
~~collect and not liable to pay money back & recover~~

515 if a man pays money by coercion this is
the proper remedy

516 altho this coercion does not amount
to duress yet if it is equitable that the
money be repaid this is the remedy for
this action tho at law has all the qualities
of a Billian Chancery in point of Equity

517 as if A gives to B his watch for as
the price a pledge to secure the payment
of ten dollars and at the time agreed up-
on appears to B the ten dollars & B refuses
to give back the watch
~~to give back the watch & pay 20 dollars unless~~
I will pay him 20 dollars which I do to
get his watch again in this case can have
this remedy to recover back the ten dollars
overpaid

518 in short money obtained in any way
by taking an undue advantage of a man
may be recovered back by this action

519 if money is obtained by judgment of court
altho the judgment should be wrong it can yet
untill this judgment is reversed by a
court of error or set aside by granting a
new trial this action cannot be maintained
for this would introduce confusion by
subjecting the judgment of one court to
be overruled by another which cannot
be done unless it is in the methods before
alluded to

520 in this action the Deft may avail himself of all respectable circumstances in his power to rebut or diminish the Plts claim

521st in England the declaration states generally that the Deft received so much money to the Plts use without pointing out the manner in which it was received

522 now Courts require the manner to be pointed out

523 as for Example I had paid to A by mistake in casting up a debt £20-0-0 too much an English declaration states only that B the Deft had received of A £20-0-0 to this the Plts use a convenient ^{Declaration} would state further that it was money ~~was~~ paid by mistake on a bond or note &c as the case was

524 and if not thus stated the Court will not let in the evidence to prove the mistake because the Deft has no matter for which he is forced and cannot be supposed to come prepared to defend

525 in England this was venial to the Deft is remedied by giving him notice seasonably upon what ground the Plt is proceeding and thus being done the Plt is not at liberty to shift his ground at the trial

525 when the parties have come together and
recovered their accounts and they subscribe
their names to their books that are annexed
to the other say £20-0- this is called an
infernal compact and this sum is
recoverable by an ~~infer~~ ^{infernal} indentures of
sanguis founded on this balance

526 formerly the terms constituting this
balance could not be looked into upon
the trial in the English Courts but now
they may be

527 our law is as it was formerly in
England and no enquiry can be had in
this action to rip up a settlement

528 but if any mistake has intervened
in a settlement the plaintiff being his
action on the case specially pleading
out in what that mistake consists

529 General of the cases before mentioned
where the action of indentures is the
proper remedy is in connection covered by
our book Debt action.

530 it is difficult to ascertain the exact
limits of this action but all such cases as
where there can not be some remedy of course
except one not covered by this action as where
money has been paid by ~~simile~~ ^{simile} fraud or otherwise
or obtained unlawfully &c &c 30 by mistake

531 it is the proper action for goods sold
and for services rendered so that is the
proper action in all cases where an
indebtedness upon a quantum valent
& an acquiescence is the proper
action in England

532 even if the price of the goods sold
or ~~labor~~ service rendered had
been agreed upon for that an express
sumpt would be it is the proper action

533 it has been doubted whether it would
be brought for money loaned but it has
been long the practice to allow of this
action to recover small sums loaned
where there were other items of the account
except the money loaned

534 and more lately money loaned
has been in many instances considered
as a good charge on back tho there was
no other item

535 it seems certain that in some cases
money loaned is a good back charge &
in others not

536 at the principle upon which ^{the} ~~the~~ doctrine
is founded seems to be this that when
the the propriety and situation of the
parties is such that it may well be ~~for~~
be supposed that the loss in question
might be made without any other security
than an entry on the lenders books it is a good
charge on books but if this is impossible
it is not a good charge

537 for Example two men of small pro-
perty are neighbours to each other say
A & B and A charges on B's books against
B a large sum for his situation as loaned
to B say £100 this is impossible that A
should lend to B £100 and take no security
at all and of course it could not be
a good charge

538 on the contrary two merchants
of great wealth ^{are} in the neighbourhood
of each other say C & D and C charges of
D an £100 & enters it on his books but in
these men it is a good charge for nothing
is more common than for such men to
lend to each other that sum & much greater
than

539 it has been that that it was unreasonable
to suffer an action of book debt to lie
latent for an infernal conspiracy & yet
in some cases it is done and in others
it cannot be done

540 the principle on which the distribution is founded is this if after the informal computation has been made a new account arises and this account is to be fixed the balance on the informal computation has been allowed as one of the P's books this is not strictly regular but it is admitted to give each two fruits —

541 but if there has been no account between the parties subsequent to the informal computation the balance arising on the computation will not be a proper matter for book debt

542 when it came to B a note &c and claims that he had made payments thereon which had not been intended to recover the value of the payments, he challenged this action has been lost and formerly supported by a course of decisions but no principle could be so dangerous there this to suffer a man to prove in this way payments as a note by his own Est.

543 lately this principle has been very properly repudiated by the court of Exors as altogether unfounded

544 in this action contrary to the rules of the common law the estate suffers all parties interested to be witnesses

552 And the action of ^{the thing} last haul. Debtor
banned ~~debtor~~ for years after contracting
the same unless the plea of implem. compen-
sasset

552 yet if it has let H. have articles
ten years ago & without for the Debt has
read money to it it will be applied to
the articles ten years old unless H. had
specified on what account he paid the money
down

553 the action of Covenant broken
is founded on the breach of an ex-
press & on implied covenant

554 by an express covenant is needed
a written & sealed agreement to do or
not to do something.

555 an implied covenant is where
the words used in an express cov-
enant which is sealed are supposed to
import an agreement that is not
expressly declared ^{promising} out of
the nature of the transaction

556 when the covenant is to pay
a sum of money this action is concern-
ment with Debt

557 if however the covenant is to pay
an aggregate sum by installments
an action of covenant lies for the
nonpayment of the first installment
but an action of Debt does not lie
untill ^{the first} ~~a~~ failure of paying the in-
stallments

558 as for example A covenants
to pay to B £100 in manner follow-
ing viz. £10 per annum untill
the whole is paid here covenant
lies if it fails to pay the first in-
stallment to recover the £10 but
Debt will not lie untill the whole
£100 becomes due

559 but if the covenant had been
to pay to B £10 a year untill for
ten years in this case an action
of ~~covenant~~ Debt as well as covenant
broken would have lain the distinction
here is nice but has its foundation in
the nature of ~~an~~ the action of Debt
560 as is here referring an aggregate
sum to be paid quarterly Debt as
well as covenant broken lies

561 the reason of the difference must be that the rent does not become due by the contract alone but by the enjoyment where therefore a quarter had expired the lessee enjoying the land he had become indebted for the sum agreed upon

561 if the agreement is thrown into the form of a real bond with condition to be void upon ^{my} payment of a certain sum by instalments an action of Debt will lie to recover the whole penalty upon failure to pay the 1st installment

562 and it seems as law a recovery of the whole for the first breach was the certain consequence

563 but by statute the court of Chancery would decree damages the bond to the amount of damages ^{only} which had been really sustained

564 and now courts of law are by statute vested with the same power and if there comes another breach a sum of money will issue on the first judgment to recover such damages as have been sustained

565 where there are several breaches
in a covenant you may sue an action
of covenant broken as often as many
as you please

566 but when there was a bond with
condition to do fealty, and there
had been several breaches the condition
was that you should not assize but
one breach for you was sufficient
to induce a forfeiture of the whole
penalty & an hundred could do no
more.

567 I apprehend that the modern rule
in this case is the same as in the
case of a covenant

568 in a covenant that respects the
conveyance of land the
covenantor may sue at law for a
breach of the covenant and recover
damages or if he elects to do so he
may apply to Chancery for a specific
performance

569 where there is a covenant to do
or not to do and a penalty annexed
for the purpose of enforcing the
agreement an action ~~may~~ of covenant
broken may be brought for the damages
or an action of Debt for the penalty

570 in such case if an action is founded ^{ex debito}
on the penalty the sum of the pe-
nalty is the rule of recovery

571 if the action of covenant breaks
is brought for a breach of the covenant
the penalty is not a rule of damages
the pl^t may recover more or less
than the penalty according to the equi-
ty of the case

572 an implied covenant runs out of the
manifestation without any words of covenant
as where a man leases a farm of land by
the the usual words of demise &c here is
an implied covenant that the lessee
shall quietly enjoy

572 fo to if a by deed covenants to c by
the words give grant &c here is an
implied covenant that it is free of the
burden

573 covenants are real & personal the
former relates to real property the
latter respect personal matters

574 in the case of all
if the covenantor dies his executor is bound
to perform

575 if the covenantor dies the right of action against covenantor accrues to the covenantee & so

576 Real covenants which burden in the life time of covenantee go to his executor for the right to damages, commenced before the covenantee's death is therefore a charge in action and with all other charges go to the Exr

577 for example I convey to B & his heirs and assigns that he is well satisfied when he is not here is a breach at the time of conveyance in the life time of the covenantee for such breach if covenantee dies the Exr must sue

578 but if there is no breach in the life time of the covenantee and the land descends to the covenantee then & then the action for a subsequent breach descends to the Heir

579 A conveys to B & his heirs & assigns to warrant & defend it and B says the land descends to his Heir at Law C who enters & is evicted by the first of D in this case the breach was subsequent to the death of B & C B's Heir at Law shall maintain his action ^{and a bill} of damages against A

540 in covenants, except quiet claim deeds then
and the true covenant, of Seisin & Warranty

541 the covenant of seisin is a covenant that
the grantor has a good title the covenant
of warranty is a covenant to defend the grantee
from all claims

542 on the covenant of seisin the grantee
may sue before eviction on the covenant
of warranty there is no breach until eviction

543 the covenant of warranty ^{does not} extend
to tortious molestations on unlawful ^{titles}

544 that is to say if A sues B and fails be-
cause he has no title A who conveyed to
B is not bound by his warranty to make
B good for the expense that he has been
at

545 but if C sues B against B then
A is bound by his warranty to pay to
B the damages sustained by the loss of
the land & the cost of defence

546 & if A had notice of the suit from
B he cannot defend he must pay the
cost that B is put to see

547 this notice is commonly given in
writing and is called doubletting in the
grantor but it is not necessary that it
should be in writing

586 but it is concluded in & Disavowed that is
conclusive upon A - when B sues A for
the damage,

587 but it is not concluded in A may go
to trial with B who sues and shows
that B had a good title notwithstanding
his action by C

588 tho a command of A's attorney does
not extend to contentious acts yet a
man may by express words bind him-
self against the contentious acts of others

589 as a command before the rule of Dam-
ages is the consideration money & interest
on A's attorney all his damages in being paid.

In this country ^{the} rule of the
the land is considered as damages and that
whether the action is brought on the command
of A's attorney or A's attorney

589 A commands to B & B to C and there is no
title in A - the grantee of B cannot sue
A for the command of A's attorney, but when
A conveyed to B it was in B's name in
X action which cannot be paid but B's re-
medy must be against B

590 but if A conveys to B & B to C & C to D & C
& Disavowed and the action is brought on the
command of A's attorney D may sue C B and A

591 A covenant to sell & convey land to
H & his heirs, performance of the land depends
& it is now claiming well conveyed & conveyance
the money shall be paid to D. & his heirs.

592 for claiming considers what is agreed to
be done as done & if it had been conveyed & H had
paid the money D would have been entitled
to it & not C & the heirs

593 if the covenant runs with the land and is
devised for the benefit of the land & the land
is not broken until after the covenanter's
death does not go to the executor but to the
heir & will pass to the heirs & grantee.

594 as per page 44 if A keeps his farm for 25 years
50 years & H covenants to have it in good re-
pair & does not A being dead & his heir is
entitled to an action.

595 the heir of the covenanter ^{on English property} is liable as
well as executor to the extent of assets in his
hands when bound by the covenant of
his ancestor for the covenant is a specialty

596 but may be questioned by executor
with great propriety whether the heir
of the covenanter is bound in Conscience
from both real & personal property is a
fund in the executor's hands for payment
of debts

597 yet if he have entered, have been made
red against the heirs of the Committor
upon full covenants in the State of Council
ent

598 the assignee of a Lease is sometimes
liable on the Covenant of the assignor tho
not named - sometimes he is liable rather
and not otherwise - and sometimes he is
not liable tho named

599 that is to say if A leases to B & B ~~aff~~
enters into Covenants with A & then
assigns to C the assignee is sometimes
bound by B's covenants altho B does not
covenant for his assignee at all times
he is bound if B covenants for him-
self & assigns but would not be bound
if there had been no covenant for his
assignee and sometimes he is not bound
altho B did covenant for himself & assigns
+ hoo C would be bound by the covenants
tho not named if the covenant runs
with the land -

601 a covenant is said to run with the
land when the thing ^{covenanting} ~~covenanted~~ ^{made} ~~made~~
was in esse at the time of the lease

602 as if B covenants with A to repair the
Hause standing on the land: ~~as to~~ at the
time of the lease this is a covenant that runs
with the land for the House was in esse
at the time of the lease + + +

603 therefore if B should covenant to sell
A to regain the lease leaf & then assign his
lease to C C cannot be bound by this cove-
nant altho there was no covenant by
B surrendering his assign for it is a covenant
that runs with the land 1144

604 the case would be the same if B cove-
nanted to pay so much rent for the term
years in effe at the time of the lease
& therefore runs with the land

605 the C the assignee is liable on
the ground of his enjoyment of the
land and not on any privity of contract
as B is therefore if C assigns to D D is not
liable for rent incurred after the assignment
to D tho D is liable whilst he enjoys

606 tho the assignee of B is liable as stated
B himself is not discharged but is tied
to upon his express contract

607 if indeed it recovers the rent of C he
is satisfied and cannot recover against
B for ~~what he~~ that which he has recov-
ered of C

608 but he may pursue his remedies against
B the lessor & C the assignee at the same
time & and obtain judgment both but if
he collects one execution he cannot col-
lect any thing on the other except cost
and if he attempts to do an audible question
he lies

b09 when A covenants to do a thing which relates to the land leased but not in effe at the time of the lease here & the assignee is not bound unless assignee are named in the covenant but if they are named he is bound

b10 as for instance B covenants to build a new house on a new site on the land demised the House & Wall on the lease were not in effe at the time of the lease therefore & the assignee is not bound unless assignee are named in the covenants

b11 but if assignee were named then A is bound to do it for the covenant relates to something to be done upon the land

b12 but in all these cases A is only bound by covenants broken as to what on the land was in his possession

b13 as if A leases to B for 30 years & B covenants for himself & assignee to build a new wall on the premises within 7 years & enjoys the premises for 10 years and never builds the wall & then assigns the residue of the lease to C in this case C would not be liable on the breach of not building the wall for the covenant was broken before C came into possession

b14 but if B had haden the land only for
fix years & then assigned to C the breach
would have been in C time and C would
be liable

b15 if A leases to B & B assigns to C & B
had covenanted for himself & assigns
if the covenant related to something no
ways concerning the demised premises
& the assignee would not be bound tho
the assignee name named in the covenant

b16 as if B had covenanted for himself and
assigns that he would build a wall on
other land than the demised premises
in this case as the covenant did not re-
late to anything to be done on the land
C would not be bound altho assigns are named

b17 if the lease of B is deemed to C is liable in
the covenants as much as if he had secured the
lease by assignment

b18 if C had taken the lease to B by execution
he would be liable in the covenants as much as
if he had taken the lease by assignment

b19 A gives B a lease a joint covenant B is disabled & C is not
in B's name in the joint issue and it is found for him
A can have no benefit of his fact as B for the covenant
was joint and as he can have no fact as C neither can
he against B

b20 a covenant to fence a man harmless does not extend to tortious acts

b21 its where covenants in a lease or to fence B the lessee harmless from all molestations in the enjoyment of his lease

b22 in this case had E who had no title disturbed the possession of B A would not be liable

b23 but if A had covenanted to fence B harmless from the molestation of E & E had molested B tortiously A would have been liable

b24 if a sheriff takes a bond to fence him harmless from the escape of A who has the liberals of the ground A escapes the sheriff may sue immediately on ground of liability without being actually damaged

b25 A owes money to B & C as surety of A covenants with B a bond to B conditioned to pay to B £100 on such certain day yet to come & then A covenants with ~~the~~ C to fence him harmless — by paying the bond for which C was his surety & fails of paying the covenant is broken & C becomes liable and may sue A

b26 if C had taken a counter bond of indemnity instead of a covenant if ^{it} had not paid at the day the ^{covenant} bond would be forfeited and C liability would be sufficient to enable him to an action against A on the counter bond

b27 this case may then occur to the surety may recover of A the money & yet A be fined for the bond which C entered with him to B the enquiry is what is to be done

628 In England the practice has been to com-
pel the defendant to pay by a decree in Chancery

629 why not recover at law by an indebitatus
assumpsit

630 the objection is that such an action in-
vades the judgment ^{of the} court which collected
the money of A

631 Apprehend no such consequence follows the
judgment is not ~~an~~ ^{an} ~~implicated~~ but since the
judgment is of facts have taken place
that renders it inevitable that the money
obtained by that judgment should be returned
by C

632 if C is bound with A to A as surety for A
A takes a covenant on bond to indemnify
himself after he has become liable in fact X
case C can have no action against A upon
account of liability but there must be a special
demurrer

633 a surety takes no bond of indemnity & if the
principal does not pay the debt ^{of} ~~more~~ liability
does not give it from a right of action. I think this
is a doubtful question as regards principle

634 but if it is that case had paid the debt
he may bring his action of indebitatus against
A to recover it ~~back~~ as far as much money paid
for the debt

635 A release to B a negotiable instrument of A
assigns to C & then B discharges A from every
liability on that instrument this discharge or
release by B has no operation for the instru-
ment being negotiable ~~was~~ the property by
the assignment was vested in C

636 had it been an instrument or chose not
assignable it would have been otherwise

637 the assignment in that case amounts
to a covenant with C which is broken by the
release but the legal title of the chose not-
withstanding the assignment remained
in B and was discharged by the release

638 A leases to B who covenants & A then sells
the reversion to C & then A releases to B
the covenants the release is of no avail
to B for the covenants run with the land
& C was vested by the sale of the reversion
to all the benefits that arise from B's cov-
nants with A

639 a release of all demands does not operate
on a covenant not broken unless it is a covenant
to pay for certain at a future time depending
on no contingency

640 but a release of all covenants discharges
an unbroken covenant

b41 ^{Account.} It is a principle in the action of account
that there should be some property at least

b42 therefore when one man comes to the
possession of the property by wrong or other
wise where there could be no contract or
findings property this action does not lie

b43 the only exception to this that
if where a person notoriously enters
upon the ^{land} estate of another and takes
the profits thereof the owner may
sue to treat him as a trespasser or
bring account against him for
the profits

b44 this action is usually brought when
property of a personal nature has
been delivered by one man to be
another for some special purpose

b45 as if it should deliver to B property
to hold with and account with him
for the profits

b46 if it delivers to B property to con-
vey to "another" man but to dispose of

b47 or to apply to some special pur-
pose as to pay a debt &c

648 so too in some cases where the law says the contract dissolved is the proper action as in case of a freedman who has had the property of the ~~see~~ ^{see} ~~ward~~ in his hands

649 in case of joint merchants one has gotten & received more than his share

650 the action has been extended by law to the case of partners of ten in common where one has sold and received more profits of the joint estate than another

651 the declaration calls upon the Deft as bookst & receiver of the old goods moves & shewing the case as it is demanding that the Deft render his account of the several matters stated in the declaration

652 this action is peculiar in its complexion there must be two judgments & there may be and commonly is two trials one before the Court of Jury & the other before a Justice

653 whenever the Deft claims that he ought not to account this plea ought to be tried by Court & Jury & if it is found that against the Deft the judge is found competent and auditors are appointed by the Court so before the case is tried

^{does} 654 These auditors report to the Court & if they find for the plt that the Deft is answerable to the plt and give him so much upon which final judgment is rendered

655 if they find for the Deft they find that the Deft is not answerable to the plt & thereupon the Court renders judgment that the Deft recovers his cost

656 if the Deft denies that he was ever accountable to the plt he will plead that he was never bailiff & receiver to the plt the plt joins issue that he was this is tried by the jury & if the jury find for the Deft that he was not bailiff & receiver to the plt the Deft recovers his cost & here is an end of the case

657 if the ^{case} jury find for the plt the verdict is that the Deft was bailiff & receiver to the plt & the judges found competent & auditors are appointed

658 if the Deft does not deny that having
some accountable but that he has already
come to a settlement with the Plt & acquiesced
with him so that he is no longer accountable
to the Plt he will plead that he has fully
accounted with the Plt and this will be
heard by jury & the proceedings the same as
in the case of no bailiff & receiver

659 if the Deft does not deny that he was an
accountable and cannot produce any actual
accounting yet he ^{denies} that he has ~~been~~ discharged this
he may plead & this is to be heard by
jury and proceedings the same as where
no bailiff & receiver was pleaded.

660 if the ^{Deft} ~~Plt~~ cannot deny that what he has
been bailiff & receiver and ~~he~~ cannot produce
that he has accounted altho he feels confident
that he can account and knows that there
never has been any discharge by the Plt
in that case he will not plead anything
to the count & jury but will suffer default
and thereupon the court renders judgment
computed & the case is put to auditors

661 so too if the ^{Deft} ~~Plt~~ knows that he is in arrears
but the Plt & he cannot agree upon the
sum he will suffer a default that the
sum may be ascertained by auditors

662 it is a rule that the Deft before
auditors cannot remove or avail himself of
any thing that he might have pleaded to the
~~count of jury~~

b b 3 therefore the Deft can never claim be-
fore auditors that he owes never bailiff
& receiver he can never show that he
has fully accounted or that he has a dis-
charge

b b 4 but before auditors he may show
every thing which goes to prove that
he is not ~~any~~ ^{an} evildoer except as is above
excepted

b b 5 as that he has actually paid to the
Pet as much as he ought to pay tho there
has been no actual accounting between
them

b b 6 altho he has paid ^{nothing} ~~nothing~~ as yet if he
can show that the property was lost
without his fault as if lost by the hands
of the sea or this will be good exonerating
before auditors

b b 7 the Auditors must assign a time for
trial and notify the parties to appear

b b 8 and if the Deft will not appear the
Auditors are to report the whole de-
mand of the Pet against the Deft

b b 9 the Deft contravening the rules of the
common law is either ⁱⁿ ~~in~~ to account
on oath before the auditors

670 when this report is made to the court
the person against whom the report
is may remonstrate to the court against
the acceptance by affirming in writing
his reasons which proceedings called is
remonstrance

671 if the ^{party} ~~defendant~~ assented appears to
the court to be insufficient if true
they will so adjudge and accept the
report

672 if they appear to the court sufficient
if true the court will enquire into
the truth of the facts

673 and if found true will set aside
the report and require assent and
if false the court will accept the
report

674 the court will never remove the
case to for rebellion the auditors have
done gently or not this court would
be to try the case again

675 but if there has been corruption
or any misfeasance by the auditors
the court will set aside the report

676 if the auditors state at length the
principles on which they have gone & it
appears to the court that they have made
a mistake on their own principles the
court will set aside the verdict

assent will

677 if the auditors have proceeded upon
very illegal ground the court will never
set aside the report on any suggestion
that the auditors have found the facts
wrong but if they came to their report
by illegal proceedings the court will
enquire into this before but it must
be by enquiry of the auditors only

678 A report will be set aside where the
auditors have admitted the defendant
to avail himself of a defence before them
that it was proper should be made before
the court & jury

679 A report will be set aside where
the auditors admit illegal testimony

^{unascertained}
680 Debt is ~~open~~ ^{assumed} of money due to the credi-
tor ~~and~~ it is sufficiently ascertained if
there is any certain rule by which it
may be ascertained certain

681 for the recovery of such debt the
action of debt is the proper remedy

682 we have seen that when there is an
express contract to pay a sum certain
the ~~debt~~ action of debt is concerned with
express assumpsit & also indebitatus

683 where there is a contract for a quantity of goods or for service rendered the sum certain is agreed upon yet the sum may be ascertained by the market price & here we have fees that Debt is concerned with indeliberates assumption

684 but in both the last cases the action has gone out of use in England and have in Connecticut returned it under the denomination of books Debt which has been conferred

685 where the law implies a contract and there is no privity of contract Debt never lies for money found paid by mistake obtained by fraud
42

686 the rule was that the whole sum demanded must be recovered in no thing this is not now the case

687 it is not always the case that if a man promises to pay a sum certain that Debt lies as where a person promises to pay the Debt of C the remedy here must be by assumption there was no privity of contract that created the Debt originally

688 - Delet has to recover a penalty given by Stat to a common informer from any person who will sue

689 ~~this is an exception to the rule that there must be a penalty of contempt but it is not of that sort~~

689 in this case Delet is concerned with an action on the statute and not generally as a proper plea in both cases

690 when Delet is himself not Delet as self a proper plea

691 Delet is the proper return to recover a sum ascertained by Juries

692 in England an Execution on a Juries cannot issue after a year & a day so that the only remedy in that case was Delet

693 by statute in that country the Stat might also have a time fixed as the Judgment

694 it has been questioned whether within the year & day in England ~~and so~~ whilst Execution could be taken out whether action of Delet could be had it is now settled that it will

695 there is no time limited in communi-
cation with an individual an Execution may
issue

696 & yet if a long time has elapsed be-
fore the Judge the Courts justify the
clerks in refusing to issue execution
upon the presumption of some length
of time that the judgment may have
been paid

697 in such cases the Plt must resort
to his action of Debt or Pross on to a
same facias

698 what length time must elapse to
put the Plt to his action of Debt has
never yet been ascertained I have known
the Clerk refuse to issue an execution
after a lapse of 12 years & the J Court
approved thereof

699 it has formerly ^{been} supposed that Debt
or judgment could not be tried in
ordinary cases where an Execution could
issue the principle it will be remembered
was this the Plt can have no greater
benefit by his action of Debt than by
his Execution it was therefore that it
was reasonable that he should be indulged
in accumulating costs

700 But where the Gentian is constant
issue as where too long a time had elapsed
and on which the judgement may be from
a picture who was removed on death
of the Gentian could not issue Debt on Judgt
was the proper remedy

701 So too where it was a judgment
of another State Executive could not
show here violation of Debt as that
judgment could be sustained

702 So too if an Execution could issue
if it could not issue to any effect
this act would be ~~unlawful~~ may be maintainable

703. for example A has obtained a Judgt
in B who has run away leaving no
visible property on which an execution
can be levied & yet earned B a sum of
money on this & cannot levy but by for-
going the Judgt he may leave a copy with
Eds Gorneshee and in that way remove out
of the many who leave to B

20th the principle seems then to be this - it was formerly considered that the 5th might live on the 1st & 2d where he could not derive equal benefit, by taking out an Execution.

705 lately by the courts in this state
give judgment for interest upon all liquid
dated loans it follows of course then
that in an action of Debt or Judgment
the interest as well as principal may
be recovered

706 this being the case I think no doubt
can be entertained that this action
may be maintained altho an Execution
X can issue for the debt in the Exchequer
can collect no interest he cannot there-
fore have the same benefit as he can
by action of Debt on the judgment

707 by the constitution of the united
States the Judgments of each State are to
be considered as binding in the other
States as if there rendered

708 of course no enquiry can be had
into the merits of the original cause
of action when a fact is proved as a judgment
rendered by any State in the Union

709 but a foreign judgment is not conclusive
evidence of a debt it is indeed *pro tanto* facit
evidence but the merits of the original
cause of action may be enquired into

710 not only so but in this last case lies
but also undeniably affirming it

711 an erroneous judgment will prevent this
action ~~unintentionally~~

712 if a judgment has been obtained by ^{hand} ~~error~~
this may be shown in proof for it
goes to show that there was no fault
in point of law

713 the general issue in this action
is it will do it

714 for money secured by bond or pledge
all the action of debt is the only
remedy ~~not debt is not the proper plea here for the~~
^{bond ~~etc~~ shows that was something else}

715 & the general issue is non est factum

716 if the bond has a condition to condition
to do or call called out the obligor may sue
in debt on the general issue and he may
also if he chooses — confound it as an agree-
ment to do the thing mentioned in the con-
dition & if it is found a thing as is proper for
a court of Chancery to decree concerning
he may apply to Chancery for a specific per-
formance

717 if however it appears from the condition
that it was the intention of the parties that
the obligor should be at liberty to perform the
debt or to do the thing mentioned in the
condition no application can be had to Chan-
cery for the remedy for that case is in
nature of a specific damages for nonperformance

8 so too in such case if there had been a covenant with penalty just might be on the covenant or debt or the penalty

719 but if it appeared from the contract that the obligor was at liberty to pay the penalty or perform the covenant the penalty being in nature of damages after-
720 betwixt the parties the only remedy would be debt for the penalty

720 Debt lies against an officer who receives out of his hands money collected this seems to be an exception to the rule that there must be a privity of contract

721 Debt lies against a sheriff when a man escapes from gaol committed as an executioner this seems to have its origin in the provisions of a statute

722 action on the case is also a convenient remedy in such case with debt

723 a Sum facias is called a judicial writ for it always proceeds upon the ground that of some previous judgment and is signed by the Clerk of the Court

724 the most common use of this writ is when there has been a judgment against an executor or administrator for a debt due from the deceased on which judgment an error appears against the estate of the deceased in his hands now if there is a return of the execution unsatisfied there issues a Sum facias against the executor to recover the debt & charges ^{proper}

725 it is a rule that on a writ on a *scire facias* the Deft can never set up any defense which goes to impeach the rectitude of the judgment on which a *scire facias* is founded
726 when a judgment has been rendered upon a bond for a breach of the condition which condition contains other engagements that have not yet been broken but may be broken after the judgment a *scire facias* upon the first judgment is the remedy to recover for those after breaches

727 as for example A gives to B a bond for £100 the condition is that A pay to B annually £10, and if he fails then the penalty is incurred ^{while £100 is due} A fails to pay the first year and B goes on the bond obtains judgment for the £100 & the Court by virtue of a power given by statute changes the judgment down to ten pounds the next year A fails to pay his ten pounds now a *scire facias* lies for B to recover his ten pounds & so on later quarters

728 A obtains a judgment B & loses it on property as he supposes belonging to B the property is sold and his debt is paid the execution is not satisfied and at turns out that the property sold was C's & new execution is then taken against C but C cannot take out a new execution as B must resort to his *scire facias* to recover from the former judgment

729 I could have had an action of Debt on
the Judgt and it is in this case a convenient
remedy with some fees

730 I receive Judgt vs B and takes his body
in Execution B takes the goods performs
Oath & goes out of Gaol I may have a sum
prias ~~con~~ on the Judgt and so far receive
it as to to procure a Judgt against the
Estate of B but not against his body

731 so too he might have had Debt on Judgt
& an Execution warrant ~~sp~~ against the
Estate of A B only

732 by force of Statute as some fees may
issue against upon a bail bond & is made
a convenient remedy with Debt

733 I give B an absconding ^{Debtor} & leaves in favour
a copy of this writ with C who sues B & obtains
a Judgt vs B he then may have a sum prias
vs C to compel him to pay to him & what
he owes to B

Detinue

734 the action of Detinue is an action brought
to recover specifically some chattel as an house

^{or}
735 the Judgt is in the alternative to award
either the chattel or the value of it a sum of
money

736 ^{thing}
The rule of damages is the value of the debt
and with ~~as~~ interest for detention

737 this action is almost gone out of use and ^{ing}
its ~~proper~~ place has been ~~traced~~ ^{traced} which
will always lie where detinue will


738 it may however be of use in special
cases as where a family picture or is detained
and from the owner for no better reason
can be recovered but a sum of money as a com-
pensation for damages and in such case money
may not be a compensation

739 for altho the right in detinue is in the
alternative of recovering up the article
detained or paying damages yet the law
can give such a sum in damages as will in-
duce the debt to deliver the article

740 it lies for any article that can be paid
before tho it cannot be bought for money
ie to pay for pounds shillings &c yet it may
be bought for any certain piece of money
that can be identified or for so much
money in a bag

741 it is said that it lies only in cases where
the debt runs largely by the article

793
The supposition that the reason why detainers
could not be maintained where the taking
was tortious was founded upon a principle
that is now exploded it was formerly sup-
posed that by a tortious taking the property
of the article was diverted out of the ori-
ginal possessor and the detainer
must show property in the article
found for and having ^{never} lost it he could not
maintain this action



1
a tender is an offer to pay a Debt
or perform a duty

This is a good plea in all cases where
the demand is ascertained as in case
of bond note or covenant to pay
a sum certain -- or a sum of for a
sum certain or what may be ascer-
tained as in a quantum solvitur & which
is ascertained by the amount given

But is no plea where damages are
uncertain as in cases of Torts or in
covenant or assumpsit to do a collateral
act

where the contract is ^{to} deliver a then
articles than money as fifty bushels
of Wheat &c by the tender the contract
is discharged & the article tendered
rests in the tenderer

so that if the tenderer takes the pro-
perty into his possession and will
x not deliver it on demand he is liable
in Treason but no suit can be maintained
upon the contract note or bond as the
case may be

if the Tenderer should give upon the note
to the Tenderer would defeat his right
of recovery

In such case the Tenderer need not
take the articles into his possession
again

if the note is for money if the
tender is made & the tenderer neglects
or refuses to take the money the tenderer
must keep it until demanded
and then deliver it

if the Tenderer demands the money
the tenderer refuses to deliver it this
revives the note so that the Tenderer
shall recover principal interest after
the demand but not before with costs

if the tenderer gives the note without
x other demand the Debt may plead
that the tenderer that he has always
been ready to deliver and now tenders
the money in Court ^{in Court} ^{the debt of tender} ^{is principal and interest}
and in such case the Debt recovers his
cost, & the Debt takes his money out of
Court

so too when he pays the note and it is paid,
 & tender in court it is the same sum
 & no more than what was at first
 tendered & the effect of the fact is
 by to receive what he might have
 had without suit

and he loses his case for the debt
 recovers his costs

it is said if the note ^{is} discharged & then
 happens it then that ~~the~~ it has the
 efficacy of recovering what is tendered
 the doubt is it does not have any
 fresh efficacy ~~the~~ it is obliged by law
 when a judgment is made to pay the
 money & the sum upon the note
 is demanded in court

and the law will not suffer B to
 call A to an account for his money
 unless in this way so that the rule
 may not be lodged with the court &
 not rise up another day to vex
 the debtor

if it is asked why is not this the case
where the contract is for other an-
imals than man the answer is it
would be more inconvenient for the
debtor to be compelled to be holder
of the articles than it would be the
risk of the notes outstanding

with the doctrine conveyed the
case where it was decided that money
when tendered afterwards depreciated
that being the same as that which
was tendered into Court was sufficient
whereas if the money

so that the loss by depreciation
was made to fall on the creditor
whereas of the which is right if
the money was his but if the mo-
ney was the Debtors and it suffered
loss he must stand by the loss

— I has pledged his horse for £20 Debt
to B & A tenders the money at the
time, the pledge is released, there is no
lien upon it and if B will not deliver
it he is liable in trover

the correct idea is this in case of tender
of money the law makes the tenderer
bailee of this money for the lender
and if lost without the fault of the
lender the lender has no claim
upon him

it would be inconvenient to make
the Debtor Bailee to the Creditor
of bulky articles he is therefore
in that account excused

but there is no such difficulty in
the case of money which can be
kept without inconvenience

it is true if the Debtor does not act
the part of a faithful Bailee and
delivers the money when demanded
the notes &c. revolve against him -

but the money tendered is considered
by law as the property of ^{the} ~~the~~
lender so he can receive no more
when he demands ~~the~~ and not the
interest that accrued from the lender

and it is Waiver of the money tendered
to ¹15

there are some few cases in the English
law where tender is made a good plea
x by stat where the damages are uncer-
tain as in case of involuntary loss
of & where a Justice has made him-
self liable by some mistake

in these cases if there has been as much
tender as the jury suppose is sufficient
the Debt shall prevail

And of no case in Connecticut in
which such provision has been made
in England after a night of ^{as tender made of money by} ^{but} ~~effect~~ ^{has}
x ~~averred~~ ~~tender~~ ~~cannot~~ is no plea in
a Court of law but it is good in a Court
of Chancery

in Connecticut we have adopted the
rule in Chancery so that tender of
principal interest & costs whenever
made it before trial may be pleaded

in England the lender is not after
right of action has accrued yet the
court will give leave to bring the
money into Court & if the bill
proves afterwards it is at his pe-
ril

In Connecticut we have no such
practise neither is it wanted for
here a lender is made at any time
if it is about to lend to the money
to the and it declares that he will not
reconvert this is said to excuse
the necessity of lending of things
that this is questionable the safest
ways to lend

X Lender of money is then is due is good
for some money without money
in fact case the Creditor if he takes
more than his Debt will be liable
in an assumpsit for money had &
received to the bill use for the sum
plus

In England money made current by some
clerk is a lender

5

In the united States any money
that actually represents ~~a~~ may be
tendered

Tender in a bag is good it is the
duty of the creditor to count it but
the witnesses must be able to swear
how much there was in the bag

Coppers in England are not a tender
unless to make ~~an~~ a piece of
a little change is wanted the reason
of this rule will apply to Cents here

if an insufficient sum is tendered &
accepted it is said the creditor has
no remedy to recover what is due
to him

such a doctrine is destructive of princi-
ple ~~is wrong~~ such tender may be
a good bar to the action but
on the original cause of action but
no bar to an action on the equity
of the case ~~grounded~~ out of the con-
sistency that this ~~is~~ would be
the creditor accepted too little

when counterfeit money is tendered
and accepted neither Deliberator ever
X Deliberator supposing it to be counterfeit
1 fresh tender is a good plea to an ac-
tion on the original cause of action

48 But the Creditor has his remedy a-
gainst the Deliberator founded on the
original cause of action

in this State there is express mode
of proceeding provided by Stat if the
action is brought within one year
under which process the court is
empowered to put the parties
under oath & examine them as wit-
nesses in the case

Bank notes have been considered
in the English Court of Chancery
as a good tender if the Debtor offered
to turn them into money & the same
doctrine of late years has been adop-
ted by Courts of law

in the a very late case it seemed to be
the opinion of the court that they were
a good tender the objection too

6th

Supposed that Bank notes are not
a tender in this country if objected
to for their conveyance. I have not be-
come ~~as~~ as general as in England

a note of ^{for money} is payable on demand or
at a fixed period but no place is fixed
the tender must be to the person of
the creditor if within the government
but if he is at the time a tender is
to be made gone a journey a tender
on ~~afford~~ a readiness to tender at his
house where he was to be expected is
sufficient

if the creditor had removed to a dis-
tant part of the country and thus long
enough before for the debtor to have
learned this fact the tender must be to
the person of the creditor

^{Creditor. At home or absent}
if the debtor is gone out of the govern-
ment a tender to his agent is good

if he has left no agent no tender is neces-
sary proof of readiness to tender will
produce the same effect as a tender

to this rule of tender to the person
there is one exception if the Debt is
for rent tender upon the land is suf-
ficient

But by articles if no place is fixed must
be tendered at the Creditor's dwelling
house

it must be ^{at} the house that was the
dwelling house of the Creditor at the
time of entering into the contract

yet in some cases it must be made
at the Creditor's new abode if that
is not more inconvenient for the
Debtor than his former residence

sometimes it will be at neither his
former or present residence for
if the Creditor appoints a place of de-
livery not more inconvenient than
his place of residence at the time of
making the contract the ^{debtor} ~~debtor~~ ought
to deliver it there

if the time is fixed ^{& place also} it must be made
at that place at that time

7
if the contract is to pay ^{at such a place} ~~an~~ or before
such a day ^{at such a place} the tender can not ~~regularly~~
be made only on the last day
so too if the contract is to pay within
a month ~~at such a place~~ the
tender cannot be regularly made
only on the last day -

the reason is that the Creditor can
not be bound to be there the whole
time not knowing when the Deb-
tor will come

therefore if the Creditor & Debtor meet
at that place any time within the
month the tender can be made

so too the tender cannot be made re-
gularly only on the ultimus or ear-
liest part of the day

that is in case of money sufficiently
early to count the money by daylight
& in case of other articles sufficient-
ly early to examine them count them
or measure them as the case may
be

yet if the parties meet at the place
at any time of the day the tender
may be then made

if the place is fixed and no time yet
the Debtor must give notice to the
creditor when he will tender

and yet that time a tender is good
if the creditor does not come he need
not tender for it ~~is~~ ^{is} made but
proof of a readiness to tender shall
have the same effect as a tender

if a bond or note negotiable
is assigned and the Debtor has no
notice of assignment a tender to the
obligee is doubtless good

but if he has notice the tender ought
to be made to the assignee

there must be this taken into consi-
deration the assignee Debtor is not
to be put to any inconvenience by
the assignment

for example James B being at Cochran
by note payable the first day of
August next and to assign to D male

of which it has ruled &
to C having at Boston is not obliged
to go to Boston but if C will come
or send his agent to A the money
must be tendered to him.

if A promises B to pay him money for
the use of C it seems the money may
be tendered to C

but if A promises B to pay money to
C it is said that the tender cannot be
made to C it is believed that such
doctrine is nonsense

where money has been tendered and
refused the Creditor to accept him-
self at his demand must act reasonably

for example if it is the Debtor who
tendered and B the Creditor who refused
B ought not to demand his money of
A when from home for it is not rea-
sonable to carry the money with him

it is a general rule that tender or need is
not to in those cases where the law
requires nothing more shall produce the same
result as the tender or need in such cases

As when A lends money and keeps the lender
good the advantage is the same as if he had had
the money.

Or if A has pledged property for a debt lender
relieves the property from the lien as much
as if the money had been paid.

So too if A has agreed to convey to B a parcel
of land for £100 if B lends he has the
same right in Chancery to compel a ~~specific~~
conveyance as if he had paid the money.

Thus far there can be no objection in the
rule for the lender in such case has
a right to the money lent and well
deserve to this extent our law agrees.

But if it is to do a collateral thing as to
build a house for £500 & lender has given
money & so it seems that by the English
law it would be entitled to the £500
and yet B has not gotten the house.

For example in Connecticut it would make no
such case he entitled to his £500 but for
to damages which he may have sustained
by any disappointment.

where A agrees to receive one thing where
 after other duty & B hinders that thing then
 is of no avail unless the thing is secured this
 may be considered as an exception to the rule

the plea of tender must state that the tender was
 made on such a day and this was the case
 whether the contract was to pay on such a
 day or on or before such a day -

if the Creditor was absent & the place fixed
 the plea should state that the Debt was absent
 & the tender was made on such a day at the
 uttermost convenient point of the day -

the plaintiff further state that the Deft refused
 to accept if he were present if he was
 absent this must be stated and that the
 Deft tendered or was ready to tender

if no place was fixed ^{only the time} the Deft must state as before and is
 refused if the Deft was ^{with} in the government
 if he was absent out of the government it is
 necessary to state that and that the Deft
 tendered or was ready to tender -

if the money is to be paid on or before such
 a day if the tender was made before noon
 ought to state that the Deft was present

in in that case no hinder could be good of the
pst was absent only on the last day

So too if place & time was fixed in such
case if hinder was before the last day you
ought to state that the pst was present
at the place or it would not be good unless
on the last day.

if it was money that was hindered you
ought not only to state as before but
in addition that you have always been ready
to pay the money and still are ready to send
hinder the same in Court

where bulky articles are hindered you need
not use this addition for you are not ob
liged to keep them or bring them into
Court

when one deft seeks a hinder of money and
the pst means to avail himself of a subse
quent demand it is the practice to reply
over this demand

if the pst waives the force and force of account
here it seems by the English that the pst does
not take the money out of Court

For convenience he is allowed to take the money
out of Court and finally it is the better way
for the pst in some cases he is obliged
to receive that money

